CONRAIL AUTHORIZATION—FISCAL YEAR 1979

United States. Congress. House.

HEARINGS

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 11492

A BILL TO AMEND THE REGIONAL RAIL REORGANIZATION ACT OF 1973 TO AUTHORIZE ADDITIONAL APPROPRIATIONS TO THE UNITED STATES RAILWAY ASSOCIATION FOR PURPOSES OF PURCHASING SECURITIES OF THE CONSOLIDATED RAIL CORPORATION

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CONRAIL AUTHORIZATION—FISCAL YEAR 1979

TUESDAY, APRIL 11, 1978

House of Representatives,
Subcommittee on Transportation and Commerce,
Committee on Interstate and Foreign Commerce,
Washington, D.C.

The subcommittee met, at 2 p.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Fred B. Rooney, chairman, presiding.

Mr. Rooney. This afternoon we are to commence hearings on the necessity for the Federal Government to provide additional funding to ConRail. Specifically we will be considering H.R. 11492, which is a bill to amend section 216 of the Regional Rail Reorganization Act of 1973, to authorize an additional $600 million to be appropriated to the U.S. Railway Association for the purpose of purchasing council's preferred series A securities.

ConRail recently completed its 5-year plan for the period of January 1, 1978, to December 31, 1982. This business plan indicates that during this period, ConRail will need $1.283 billion in addition to the $2.1 billion provided to ConRail in the Railroad Revitalizaton and Regulatory Reform Act of 1976.

In addition to H.R. 11492, consideration will be given during these hearings to the necessity of providing ConRail, at this time, with the full amount of financing it indicates will be necessary during the next 5 years.

The necessity for this additional financing, I am sure, comes as a disappointment to most of us, especially the members of this committee. At the same time, I am sure it does not come as a surprise to many of us. ConRail celebrated its second anniversary last week on April 1, 1978. The celebration was probably not marked with much merriment considering the difficulties encountered during the past 2 years, and the outlook forecast in its 5-year plan.

During the past 2 years, ConRail, as well as many of the other railroads in this country, was plagued with unprecedented acts of God. It suffered from record snowfalls, from record low temperatures, from a number of floods, crippling iron ore, longshoremen, and coal strikes. It is no wonder that ConRail has been unable to make progress at the rate projected in the final system plan.

A number of us were aware of these adverse conditions at the time of their occurrence. I would, however, at this time also like to place the matter in perspective by recalling a number of incidents which occurred at about the time of ConRail's inception.

For example, although not an act of God, ConRail was also plagued with fewer cars, and a smaller amount of motive power than indicated in the final system plan as going to be available. These shortages were in both total numbers and condition of the equipment. These conditions were brought about in large part by the bankrupt railroads shortly before conveyance and were not necessarily miscalculations in the final system plan.

It is also recalled that the financing for ConRail, that is the $2.1 billion, included over $300 million for what was considered to be a margin of safety for any subsequent variations between the final system plan projections and actual expenses. This margin of safety was wiped out before ConRail even started.

Immediately prior to ConRail's inception, last minute changes had to be made to provide for the so-called alternative final system plan, or unified ConRail, whereby ConRail took over considerably more of the operations of the bankrupt railroads then contemplated, in order to compensate for the fact that Southern Railway and the Chessie System declined to participate in the plan.

Congress was aware at the time, that this action eliminated the margin of safety, but decided to delay taking any action until it could accurately determine whether a margin of safety would be required for other projection variances.

Moreover, it should also be recalled, that at the inception there were many who contended that the capital recommended in the final system plan was entirely inadequate, even for the smaller sized ConRail.

Testimony was received from a major financial institution to the effect that the Federal Government should provide a minimum of $7 to $10 billion at the outset. Without using hindsight or contending shortsightedness on the part of USRA, it should nevertheless be recognized that there was a considerable difference of opinion between well-known experts as to what would be an adequate amount of financing.

Critics today want to state that USRA missed the mark by 60 percent. At the same time, the combined original $2.1 billion and the $1.3 billion requested today, is still only 50 percent of the amount originally projected by some experts as a minimum.

Obviously, we are now in a position to know what this margin of safety, plus a margin for other adjustments in the final system plan projections, is required. I say this so as to make it clear that financial projections of the magnitude undertaken in the final system plan, or in anyone else's long-range financial projections, not be considered an exact of accuracy possible, the exact amount that ConRail will need from the Federal Government for additional financing.

In providing this additional financing, I strongly emphasize that it should not be interpreted that ConRail is becoming a ward of the Government. I recognize that many believe that Amtrak has become such a ward, and I do not believe that ConRail should be considered in that same category.

Before the 4–R Act was enacted, it was believed that ConRail was the proper private enterprise solution. I am still convinced that this is the correct approach to this most serious problem—namely, that of the bankrupt railroads in the Northeast.

Without objection, the Chair wishes to place in the record, as though read, the statement of Congressman Joe Skubitz of Kansas.

STATEMENT OF HON. JOE SKUBITZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. SKUBITZ. Mr. Chairman, I support the amendment of the chairman of the Subcommittee on Transportation and Commerce, Mr. Rooney. The purpose of his amendment is simply to consolidate two bills reported by our committee and to clarify existing law.

The consolidation involves two items. First is a bill authorizing money to USRA and containing certain technical amendments. Second is a bill authorizing $1 million for the Office of Rail Public Counsel at the Interstate Commerce Commission.

Mr. Chairman, I never was a big fan of the Office of Rail Public Counsel. I must say that my enthusiasm has not increased, particularly since the job has not been filled since we created it in February 1976. Today there continues to be an office without a leader. The other body has had the name of a nominee, but has taken no action. I understand there is considerable question about the qualifications of the nominee since he has not had any experience with either rail management, rail labor, or shippers. I have about reached the point where I would be happy if the office were either abolished or the job filled by almost anyone. When the Congress enacts a law, I think it is reasonable for us to expect the executive branch to carry out the law. In this particular area, there has been much dragging of feet. The $1 million authorization gives the executive branch the last chance to fill a job wanted by few and apparently needed by fewer still.

Mr. Chairman, the USRA authorization is another matter. The authorization is $23 million and is needed if we are to protect the investment of the United States in the reorganization of the bankrupt railroads of the Northeast. As you know, the trustees of the various bankrupt railroads in the Northeast have brought a court case to claim compensation from the Federal Government for the properties which were originally theirs. The USRA in the final system plan estimated that the value of the properties taken to form ConRail was in the vicinity of $600 million. The bankrupt estates have claimed the value of the property in the $10 to $14 billion range. While the original USRA estimate may have been too low, the expectations by the lawyers of the bankrupt railroads is far too high.

The court has determined that the property in question must be addressed and given a value. That assessment and valuation will cost a great deal of money. About a third of the $23 million being requested by USRA will be used for that valuation. Most of the additional money will be used to defend the United States in court and to oversee the operations of ConRail.

Mr. Chairman, the operations of ConRail require considerable overseeing. The United States has a considerable investment in ConRail and that investment was made to insure that ConRail would remain in the private sector. ConRail management on the other hand seems determined to make another Post Office out of their business. It often seems that ConRail spends more time and effort using its Washington office to woo and placate Congress than time devoted to a businesslike management of its gigantic railroad properties.

Mr. Chairman, I am very concerned about the financial condition and the prospects of ConRail. Many of their problems are beyond their control. The hard winter last year, for example, created additional costs for ConRail and was something over which neither ConRail nor the Congress had any control.

An area over which ConRail does have control is its basic attitude toward its own character and transportation role. I think ConRail has a bad attitudinal problem if it wants to survive as a private company. At the present time, too many decisions are made by its Washington office for governmental affairs and too few decisions are made by management personnel brought up with good business practices. I think ConRail pampers both Congress and rail labor. Some of my colleagues may not like what I am saying, but if we in Congress do not leave ConRail alone, we shall surely turn it into another Amtrak. On ConRail's part, it should give up its habit of always seeking political compromise and begin acting like a business that must make hard decisions if it is to become profitable. One place ConRail might want to start improving its performance is with the abolishment of its Washington office for congressional affairs. It would seem to me that USRA, the ICC, and the Department of Transportation have enough people already engaged in supervising ConRail's activities so that ConRail does not need to have its own employees engaged in lobbying. In short, we have the resources to find out what is going on at ConRail and too often, Washington representatives tend to be used as expediters for political logrolling. Let's get the politics out of ConRail and keep it out.

ConRail's loss for its first 12 months of operations was $664 million on an ICC accounting basis and $413 million on a depreciation accounting basis. In real terms, let me point out that ConRail drew down $667 million in Government funds. Those $667 million are tax dollars under anybody's accounting system. In short, ConRail has been incurring net losses in excess of the projections outlined in the final system plan. While the severe winter weather may have accounted for a portion of this loss, the primary reasons are a critical shortage of certain freight car revenue cars, the lack of an adequate costing system, and ConRail's inability to generate new sources of freight revenues. ConRail's ratio of transportation expenses to operating revenues was 47.9 percent in 1976 compared to 39.6 percent for all class 1 railroads. In short, this suggests that ConRail might well start trimming track and personnel in order to have a better ratio.

Car utilization by ConRail in its first year of operation actually deteriorated over the car utilization by the old Penn Central. The quality of service provided by ConRail was found by the ICC to have been inadequate for small shippers. The ICC concluded that ConRail "seems to be neglecting this business in favor of servicing higher rated and longer haul customers." In short, the ICC concluded that major problems at ConRail exist in the operational, revenue generation, and cost control areas.

Mr. Chairman, this authorization for USRA will help in providing some surveillance of ConRail operations. I must add, however, that ConRail itself must begin to measure up to its responsibilities if we are to have reliable rail transportation in the Northeast which remains in the private sector. None of us want to see ConRail become another Post Office or another Amtrak.

I urge my colleagues to use self-restraint in their demands on asking for postponement of necessary actions by ConRail in order to improve their revenue/cost ratio. I ask ConRail to begin thinking like a business instead of a political entity.

I urge my colleagues to support the amendment by Mr. Rooney and the prompt passage of the bill as amended.

Mr. Rooney. Without objection the text of H.R. 11492 will be printed at this point in the record.

[The text of H.R. 11492 follows:]

95TH CONGRESS
2D SESSION

H. R. 11492

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 1978

Mr. STAGGERS (for himself and Mr. ROONEY) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Regional Rail Reorganization Act of 1973 to authorize additional appropriations to the United States Railway Association for purposes of purchasing securities of the Consolidated Rail Corporation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 216 (a) (2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726 (a) (2)) is amended by striking out "$1,100,000,000" and inserting "$1,700,000,000" in lieu thereof.

(b) Section 216 (b) (2) of such Act (45 U.S.C. 726 (b) (2)) is amended by striking out "$1,100,000,000" and inserting "$1,700,000,000" in lieu thereof.

I

(c) Section 216 (f) of such Act (45 U.S.C. 726 (f)) is amended by striking out "$2,100,000,000" and inserting "$2,700,000,000" in lieu thereof.

Mr. ROONEY. Our first witness today will be Mr. Donald C. Cole, president and chief executive officer of the U.S. Railway Association, Washington, D.C.

STATEMENT OF DONALD C. COLE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, UNITED STATES RAILWAY ASSOCIATION, ACCOMPANIED BY FRED YOCUM, VICE PRESIDENT OF OPERATIONS; JOSEPH WELCH, VICE PRESIDENT OF FINANCE; CARY DICKIESON, VICE PRESIDENT AND GENERAL COUNSEL; MICHAEL MATES, FINANCIAL DIRECTOR, AND W. J. ANDERSON, FINANCIAL DIRECTOR

Mr. COLE. Thank you, Mr. Chairman. Your statement has very well summarized the history of ConRail and the background which the association was faced with 2 years ago regarding the financing requirements.

Before I begun my statement, which I have prepared in abbreviated form, I would like to introduce those with me today. With me at the table are Mr. Fred Yocum, vice president of operations. Behind me is Mr. Joseph Welch, who just joined the staff as our vice president of finance; Cary Dickieson, our vice president and general counsel. Accompanying Mr. Welch are two of his financial directors, Mr. Michael Mates and Mr. W. J. Anderson, the latter, Mr. Anderson, having served for several months as an acting vice president of finance, while we were endeavoring to fill that spot.

Both Mr. Yocum and Mr. Welch have joined the staff in just the last few months. I think that this is indicative of some of the action that we are taking regarding ConRail.

I believe that the members have a copy of my abbreviated statement, which I will follow at this time.

USRA is the Federal banker to Consolidated Rail Corp. I am pleased to testify today as president of the U.S. Railway Association regarding H.R. 11492 to increase the authorization for ConRail.

At this time, we think it is also appropriate to testify regarding the performance of ConRail during its first 2 years of operation, particularly its efforts to achieve profitability by 1980.

Under section 307(b) of the 3R Act, the association is required to submit to the Congress on May 31 of each year a report on the performance of ConRail. The association's board of directors will review and approve the report during the next few weeks. Since the association's board has not completed its review of funding requirements, my comments are not intended to reflect the board's position.

On February 15, as you indicated, Mr. Chairman, ConRail submitted to the assocition its 5-year plan which indicates that ConRail will require at least $1.3 billion more in Federal funds in order to achieve financial self-sustainability. The association has always recognized that ConRail might require an additional funding authorization to achieve this goal. The original authorization did not make any meaningful provision for the possibility that key assumptions in the final system plan might not be realized.

The association's staff is currently studying ConRail's future funding needs as part of its review of ConRail's 5-year plan. This staff analysis will comprise an important part of the May 31 report. My testimony today serves as a prelude to that report.

As a little background, when the funding problems of ConRail became apparent, we established separate departments for finance and operations and increased the professional monitoring staff. The staff has expertise in marketing, cost analysis, operations, and equipment utilization and represents an effective monitoring capability, much of which did not exist less than a year ago.

I might say, at this time, that this, in part, is a result of the initiative taken by Chairman Rooney and Mr. Skubitz to have Congress authorize additional funds for the association's increased administrative expenses.

As the chairman's statement indicated, ConRail has been in operation for 2 years. I might indicate that we did not quite have time for a celebration on April 1 at the association. During that time, the company has been endeavoring to correct the problems inherited from the bankrupt railroads.

The carrier's program, for example, in rehabilitating track and roadbed during the past two maintenance-of-way seasons has been impressive, and, in fact, has exceeded the goals of the final system plan.

However, despite such rehabilitation gains, there have been problems, both external and internal, which the association has been evaluating continuously. ConRail has been affected adversely by external forces, act of God, over which the railroad has no control. These were caused by the weather and were aggravated by strikes among iron ore workers, coal miners, and longshoremen.

Aside from these acts of God and external problems, the association sees several critical areas where internal problems must be resolved positively if the company is to achieve the objectives it has established for itself in its own 5-year business plan. It must increase its volume of traffic, improve car and locomotive utilization, and institute other operational efficiencies necessary to reduce costs.

While ConRail's 5-year forecast projects a turn-around from the historical shrinking traffic base of the Northeast, the total revenues projected for the 5-year period are $1.77 billion less than the final system plan projected for the same period. I can say categorically that if ConRail's traffic base does not increase over the next 5 years, the railroad cannot possibly become profitable with its present plant.

Turning to utilization, ConRail expects a 14-percent improvement in the utilization rate of revenue cars, far from the goal in the final system plan for a 28-percent improvement. This target was too optimistic and did not account for the condition and size of the fleet inherited or the higher costs of maintenance of that fleet.

In ConRail's business plan, cash flow from operations is $1.8 billion less than that projected in the final system plan. Approximately 25 percent of this difference is due to the lower number and quality of cars conveyed to ConRail than originally estimated. Another 25 percent of the reduction from the original target is caused by the lower volume levels now forecast. The remaining 50 percent of the difference between the business plan and the final system plan results from the difference between car utilization rates, if the cost of additional car acquisition is also included in the calculation.

ConRail's locomotive fleet this past winter experienced the greatest out-of-service level in its brief history. This concerns the association because it puts tremendous constraints on revenues, especially in services demanding quick turn-arounds such as piggyback service, which has deteriorated.

We find that the correlation between out-of-service ratios and locomotives and services has been very close. The service has been a problem, and it has actually been deteriorating from ConRail's own internal statistics for the last 2 years. Most of it may be laid to locomotive problems. I think that this is important if this committee considers the need for ConRail to increase its revenue base. Without service, it is difficult to achieve the revenues.

With regard to efficiencies, ConRail sees efficiencies occurring in areas other than car utilization. The savings amount to about $1 billion and are almost equally divided between those which require labor negotiations and those which do not.

During the 1978 to 1982 period, ConRail anticipates making a financial turn-around primarily through gains in business volume and operating efficiency. These projections are optimistic in both areas, especially since increased volume is not completely within the railroad's control.

Another key favor in ConRail's forecast is the availability of Federal investment, which constitutes an important source of the railroad's funds. If these funds are not available on a predictable basis, then ConRail cannot make the necessary capital expenditures called for in its business plan.

If certain key elements in ConRail's 5-year plan are not realized, the railroad will require substantially more than the indicated $1.3 billion. These include assumptions regarding traffic volume, car and locomotive utilization and other operating efficiences to be achieved through labor negotiations and improvement in management control.

The association's staff is currently studying the likelihood that ConRail will need public investment in addition to the $1.3 billion. At this point, however, we are not prepared to make any final judgment about the validity of these key assumptions.

Moreover, on the basis of our initial analysis, ConRail's assumptions, particularly traffic volume, appear to be rather optimistic.

Notwithstanding the magnitude of these problems and the difficulties in resolving them, ConRail still may be able to achieve the performance goals of its 5-year plan with an additional $1.3 billion in appropriated funds. Unfortunately, we shall not be certain for some months that those goals may be met.

It is important, however, to provide through additional authorization and appropriations adequate funding to permit ConRail to continue implementing the plans it has developed. To provide insufficient funds would curtail further rehabilitation of the physical plant, and this would create more problems in the future.

Mr. Chairman, this is generally the background of my statement. I am open to whatever questions the committee might provide.

I might reference something that you said in your opening statement with regard to continual subsidy for ConRail like Amtrak. The association looks upon ConRail as something substantially different from Amtrak. First of all, passenger operations, in any country, including the United States, are a very difficult area to define profitability.

Furthermore, I think that this is important as we look at the ConRail funding needs. The Government investment into ConRail represents a small investment of its cash receipts. Whereas the Government seems to be providing subsidies for Amtrak of over 50 percent of its total cash receipts.

Government, on the other hand, during 1976 and 1977, provided only about 16 percent of ConRail's needs. In 1978 through 1982, under the ConRail proposed plan, this will be less favorable, more than 16 percent.

Then, for the remainder of the 5-year period, the Government investment will be only about 9 percent of the cash receipts. This is an important difference because you have a lot less problems in getting ConRail off the Federal funding mechanism, and reaching self-sustainability than you would with Amtrak.

The second issue that I would like to address here is, when you reference how much USRA projections may have missed the percentage amount in the final system plan, and how much ConRail may need now, the Federal funding, of course, was only 10 to 15 percent of the needs.

So all we have to do in the projection is miss by 1 or 2 percent of the total cash flow of an entity like ConRail, and that level is up considerably on the percentage missed on the Federal funding side. That is going to be important in any evaluation of ConRail's revenues and its projections for revenues because 3 percentage slippage in revenues has a tremendous impact on the total amount of Federal dollars required.

Mr. Chairman and members of the subcommittee, I am now ready to answer any questions that you may have regarding the 5-year plan of ConRail and our analysis thereof.

Mr. ROONEY. The gentleman from New Jersey, Mr. Florio.

Mr. FLORIO. Thank you, Mr. Chairman.

I think that it is objectively correct that there was an overstatement in the final system plan as to revenues that were to be anticipated. For the most part, it seems to me, that overstatement was flowing from an overly optimistic expectation of what the Northeast economy was going to do.

As the Northeast economy was to come back under that projection, more revenues were anticipated, more traffic was anticipated.

What corrections have you made, if any, in the 5-year plan projections for increased traffic flowing from Northeast economic improvement that you did not build into the final system plan?

Mr. COLE. Mr. Florio I think that it is probably an overstatement regarding the Northeast economy. As we see our projections right now, and using all the macro-economic figures available, and what we have seen for the past 2 years, there has been growth in the Northeast economy. However, it is about only 80 percent of the growth of the rest of the Nation.

It is unlikely that this economic situation has been the most significant, or has had the generally significant impact on ConRail. There have been specific industry problems for the Northeast that have impacted some important commodities for ConRail, iron and steel in particular. If you look at the coal strike in itself, it has had its deep impact.

ConRail's share of the Eastern rail market has not changed much. However, ConRail's share of the total transportation market seems to have declined. So an even faster growth rate in the Northeast economy would not have resulted in a proportional increase in ConRail tonnage.

We are in the process right now of trying to examine with consultants the issue of the competitive situation in the Northeast, which may be more important than the economy of the Northeast in driving ConRail's revenues down.

Of course, the competitive situation is driven by ConRail's ability to provide service. So the drop in revenues up to now, and even in the future may be much more a problem because of ConRail's service reliability, car utilization and pricing, rather than the Northeast economy as the driving factor.

The Northeast economy has its effect, but ConRail has not been able to provide the service demand that may have been out there. It does not help the Northeast economy either, if the rail service is not adquate, and they have to shift to trucking. It is a very complex issue.

Mr. FLORIO. No one would dispute the fact that it is a complex issue.

In the analysis, or the analysis that you have of this complex issue, references to the Northeast economy's growth, even though the growth has not been commensurate with the overall growth, really do not address the problems of what it is you transport, except the Northeast comes back to what it wants back.

I would suggest to you that it is not going to come back on the basis of manufacturing. It is not going to come back in the areas that you are the most concerned about, to the extent that we now have a much higher proportion of our revenues coming out of a service economy, which works to your detriment, because those are not things that you are going to be transporting.

The only point that I raise is something that you said. Unless there is a turnaround of traffic volume. That volume is not going to turnaround if we have a service economy and a reduced manufacturing economy. Unless there is a turnaround, there will be no profit under the existing present plant.

I am suggesting that maybe the real problem is at the plant. What we have now is essentially the same plant that we had at the time when the economy of the Northeast was a manufacturing economy, and when there was a transportation of goods that you could profit from.

So comparable plant's reduced ability to transport because the economy is not the same, and it is never going to be the same again, means that you have a self-fulfilling statement. You are not going to get the volume of traffic. You are not going to get the value of revenues as long as you have the existing plant.

So that the real thrust has got to be to examine reductions in the plants, so that they are proportional to the volume of traffic that can be generated by the system in the Northeast, and hopefully have an improved system for the Northeast.

35-045—78——2

Mr. COLE. I follow you, Mr. Florio. Our position right now is, from our own independent analysis which is different from ConRail's, we feel that there is for rail service the potential of turning around the system out there. There is a lot of demand that ConRail was not able to fulfill. It may still not be enough to achieve the revenues that are necessary to bring the turnaround.

This is one of the areas that we intend to analyze over the next year, and evaluate. If you cannot turn ConRail around from $1.3 billion, or some incremental addition to that, then what alternatives do we have to deal with the plant, the type of rail service that can be handled in the Northeast.

Mr. FLORIO. Shouldn't all of those deliberations have gone into the 5-year projection?

You are presenting a plan at this point. You are going to be asking for money to fund that plan over a 5-year period. Yet, you say that there are some variables that are still not thoroughly analyzed. Shouldn't we be talking about interim plans, until we can get those very basic and elemental questions answered?

Mr. COLE. Our analysis indicates that the $1.3 billion is basically a minimum amount. We have indicated that it is an optimistic level. Consequently, it is a minimum amount. It can be looked at as the amount of money for ConRail to attempt to carry out its plan, which analyzes the turnaround, analyzes ConRail's strategy, et cetera. If ConRail cannot do it for the $1.3 billion, then we have had the interim time for other planning alternatives to go forward.

The $1.3 billion can be looked at as the minimum amount necessary for ConRail to have its opportunity to show that its planning, and it has done a lot of planning on this issue that you raise, it has done a lot of market strategy work. It has evaluated a variety of commodities, in a line of business analysis, and its plan indicates that the turnaround can be done.

Our concern is that even if you get a turnaround, it may not come as quickly as ConRail may project it.

Mr. FLORIO. This leads me to conclude that there are some who feel that the $1.3 billion is a substantial amount, as obviously it is, but before those moneys should be spent, particularly for capital expenditures, we should know what the extent of the plant should be over the long term, based on some of the things that you may be analyzing now.

When we make our decision—what the committee is trying to do at this point, and I think that there is consensus on the committee, before we plough too much more money into ConRail, maybe we should have the results of the DOT analysis as to what the total plant should look like, or what the total system should look like. Then we will deal with the numbers that are required to finance that plant.

Mr. COLE. Your assumption is that ConRail over the next 2 or 3 years, whatever the interim period might be, would be making capital investments through the $1.3 billion, which would not be made if an alternative configuration, or an alternative approach to ConRail were accepted by Congress.

I would like, very quickly, to have Mr. Yocum comment on that, since he is close to what type of capital expenditures are contemplated in the next 2 years, and I think that he might put you at ease on that issue.

Mr. YOCUM. We are very much concerned with the places where the capital improvements are going. ConRail has done a good job to date of concentrating these improvements in core trackage, which is the heavy density trackage. For the most part, the improvement is going into trackage which has more than 20 million tons a year, which is a sizable amount of railroad tonnage. That is the amount required for a line to be what Department of Energy classification calls a class A main line.

On that basis, the great preponderance of the capital improvements are going into that part of the plant which would be left behind if the plant was substantialy rationalized in order to take account of the shrinking of the traffic base.

We have been very careful to work with ConRail personnel to make sure that the investments that they are making are investments that can be defended—that is, that these investments are going into places where the volume and service orientation of the business is such that it can be a part of a profitable system later on—even if the plant needs to be rationalized.

Mr. FLORIO. Let me conclude with one point and a request, if you would be in a position to provide to me, and I am sure that the other members of the committee would be interested in it—a projection as to the priority of projects.

Mr. COLE. We can submit that. I have already, along with ConRail, done an analysis of that type of issue.

Mr. ROONEY. The gentleman from Illinois, Mr. Madigan.

Mr. MADIGAN. Mr. Cole, could you summarize for me the status of the Penn Central suit against ConRail?

Mr. COLE. Mr. Madigan, I would like to bring our vice president and general counsel up here. He is in the midst of dealing with this issue in the last few days. He will provide a specific summary.

Mr. DICKIESON. The valuation of the assets of the bankrupt railroads which are transferred to ConRail has been pending since April 1976. There have been a series of major opinions regarding that issue decided by the special court in which the case is being tried; the most recent decision was issued in October 1977. Prior to that, in April 1977, there was a major opinion dealing with the so-called erosion issue.

The case is now in the discovery phase. It is starting to move toward trial. The Government parties have filed a motion attempting to set a trial schedule for the valuation period. The trustees have filed a motion of their own. Argument on these motions probably will be heard next week. At that point, we will have a better idea of how soon this case might get to trial.

We have been at it now for 2 years, and we have a long way to go.

Mr. MADIGAN. You do not have any forecast as to when it will be finally resolved?

Mr. DICKIESON. My own view is that if the matter has to be tried completely through the court, the special court could not be done with its work for 2 to 4 years. Then you would have, after that, an appeal to the Supreme Court.

Mr. MADIGAN. Mr. Cole, does the fact that the litigation is still pending impair what otherwise would be normal management practices on the part of ConRail in the disposition of unprofitable property, for example?

Mr. COLE. We have had no indication that this is a problem at all. I think that ConRail has been very concerned for its long-range future regarding the outcome of that case, and what the potential of the stock, which is stock that goes under the 3R Act, to the former owner-trustees and the former creditors.

From that standpoint, ConRail is looking down the line and raises a lot of issues. Right now, we see nothing wrong with that.

Mr. Dickieson, do you see anything wrong with that?

Mr. DICKIESON. In terms of disposing of properties, there have been some lawsuits, apart from the main valuation proceedings, that have challenged our conveyances of certain properties to ConRail. Most of these lawsuits have been settled.

My own view would be that the conclusion of the valuation case would provide some benefit to ConRail in terms of the increased certainty that it would have in dealing with its properties and its business, but that the problem caused by the pendency of the case does not approach the magnitude of the critical problems addressed in Mr. Cole's testimony.

Mr. MADIGAN. Mr. Cole, you say to the Board, we have to go to Congress, and we have to ask for this additional money. You are really precluded from presenting the Board with alternatives on the various parts of the system. Is that not correct?

Mr. COLE. One of the issues in the litigation is the issue of what the transfer might have done, and what we might have done in the alternative, if we had sold those properties. We have not looked at that as a hindrance to deal with the situation.

Again, I will ask Mr. Dickieson to address that.

Mr. DICKIESON. For ConRail to conclude that instead of asking for more money it should dispose of some of its lines to some other railroad might be a difficult decision for it to reach right now because, in part, of the evaluation case.

If the same proposal, on the other hand, were to be structured as a supplemental transaction under section 305 of the 3R Act, then it would be possible for the corporation to go ahead because such a transaction would be reviewed by the association, the Interstate Commerce Commission, and most importantly by the special court. This review process would eliminate any exposure ConRail's Board might have to stockholders' claims that they have acted improperly.

Mr. MADIGAN. Am I incorrect in assuming that the choice that is presented to the Board is to ask the Congress for more money, or to do nothing. There are no other kinds of alternatives?

Mr. COLE. The Board will not have, at this point, the May 31 report, or a group of alternatives. The Board will have our basic analysis of their plan, our own basic projections of that plan.

The USRA Board can conclude that that amount of money is more than they want to deal with, and raise the issue of interim financing that Mr. Florio has just talked about. Our Board can decide that this is the alternative, or that they want the entire amount authorized and appropriated by Congress.

I think the problem is that there is no way that you can stop now and develop alternatives which could be implemented before ConRail would need to utilize the funding that we are discussing today.

Mr. FLORIO. Would the gentleman yield?

Mr. MADIGAN. Yes.

Mr. FLORIO. Isn't it the case that you are currently negotiating, at least with one State, New Jersey, for the sale of certain properties in your commuter lines under the 900-day provision of the 3R Act, I believe.

If those sales were to take place, that would generate revenue. Are those revenues being anticipated before the request is made of Congress, or is that something that is of second consideration? And are there any other such negotiations going on with anyone else?

Mr. COLE. Under the 900-day provision, USRA is not involved.

Mr. FLORIO. They are going to have the benefit of the revenues. If they have the revenues, they will not need to come to USRA for a proportionate demand of money.

Mr. COLE. We have not calculated that. I am not aware that in our projections that we have attempted specifically to deal with ConRail's income from those sources. I believe that basically the whole amount is insignificant. There is not a significant amount of revenues projected at all from those types of sales.

Mr. FLORIO. You did not regard $1.3 billion as significant. What do you regard as not significant?

Mr. DICKIESON. The law provides that the transfer from ConRail to the commuter authorities under the 900-day option shall be at a price which is related to the price that ConRail paid for the property, at least prior to any determination by the special court.

For the very limited number of commuter properties we are talking about, although we are involved in trying to find out precisely what that amount should be, it is quite small. It is not more than a few million dollars.

Mr. FLORIO. These are the only negotiations that are going on, as far as you know, the State of New Jersey?

Mr. COLE. The commuter authority is the only one that we know right now.

Mr. FLORIO. Thank you very much.

Mr. MADIGAN. When the system was originally being put together, there was some thought given, and I think some work done on the proposition that the Southern and Chessie System would really take over what is now ConRail.

It is my understanding, although I was not involved in any of this at the time, that fell apart because those two railroads were not agreeable to the labor agreements that were in effect at that time.

If that understanding of mine is correct I would like to know if anyone in ConRail is pursuing that?

Mr. COLE. ConRail is not, that I am aware of, dealing with any big property transfers of the magnitude that we talked about there. I think that Con Rail is going ahead with some coordination-type projects with the Chessie System in particular. But you are correct in the fact that these other alternative structures that we have put forth in our final system plan did fall through because of labor conditions and labor negotiations.

It is my understanding, and this is from some interviews that our people have had with other railroads at that time, that they, in the light of hindsight, would not be interested in resurrecting those transfers. They have no interest right now, basically, in the proposals, if you were to put those forward, and the impediments that existed 3 years ago would be removed.

Mr. MADIGAN. What about the D. & H., should it go bankrupt?

Mr. COLE. Our Board has addressed this issue several times, and so far there has been no conclusion that it should go bankrupt. It has been a hotly debated issue among the members of our board. Assuming that the D. & H. cannot continue its services beyond the short time, after going into bankruptcy, then the ICC might have to step in, and direct service orders which would cost the Federal Government much in addition to what we have remaining for the D. & H., and probably not buy much more time, if any more time.

The issue of whether the D. & H. should be in bankruptcy is one that involves the interests of several States, New England, New York State. I can only say right now that we have different viewpoints on that even on the USRA Board.

Mr. MADIGAN. Picking up on your use of the term "sensitivity analysis," if I understand what that means—you look at what is gonig to happen to the economy in the areas which you serve. You have different economic models that you slide back and forth. Then you make predictions about what is going to happen and how that is going to impact on the business that ConRail does. Is that correct?

Mr. COLE. That is only one element of it. Basically, the sensitivity analysis was a look at the different assumptions, the assumptions in the business plan and the revenues, car utilization, the efficiencies to be gained in certain areas, and the labor productivity improvements projected, and then decide what the upside and downside risks of each one of those is, and not go across the board and say, "Let's look at 10 percent up, and 10 percent down, and that means that if anything goes wrong, the Federal Government has to put in so much more money. If everything goes right, it has to put in this much money."

Our sensitivity analysis is to look at each assumption and come out with an optimistic side of ConRail's funding needs, and a pessimistic side of ConRail's funding needs. The pessimistic side is no turnaround in the revenue base, basically. It is where we are in our sensitivity analysis.

Mr. MADIGAN. I am looking at a table in the report of the General Accounting Office. That table shows what ConRail's estimates were by category by quarter for 1976, and what they expected to haul, whether it was coal, automobiles, primary metals, or whatever it was.

All of those tonnage figures are estimated by quarter and category. There are 6 categories, and 24 figures that we can deal with. It is done for 2 years—1976 and 1977—giving us a total of 48 numbers that we can look at. In every case it appears that ConRail was wrong. In every case, with perhaps one exception, they overestimated by category and by quarter how much business they would be doing.

Is that done on the basis of some econometric model that is given them by somebody else?

Mr. COLE. I would like Mr. Yocum to explain both what ConRail does for its projections and what we are doing now. I might state that it is my firm conclusion that USRA now has a stronger economic forecasting projection as we go along than we had for the PSP and FSP.

We have a system in which we follow the macroeconomic changes as they come in.

Mr. Yocum, you might comment on what ConRail is doing, and what we are doing.

Mr. Yocum. The projections for 1976 in the table of the GAO report are from the final system plan. However, as is noted in footnote A, there is a serious problem with those statistics in that there is double counting for any business that was handled on two or more of the predecessor railroads. In other words, any business that was both on the Reading and the Lehigh Valley is counted more than once. So the right-hand side does not compare completely with the left-hand side.

However, the general point is the one that I think Mr. Florio was making earlier, and it is made directly in the analysis of those two tables. If this trend continues, and ConRail does not turnaround the decrease in tonnage that it has experienced in 1976 and 1977 within its present configuration, it cannot become a self-sustaining railroad.

We have already stated that we concur with that. Why we are analyzing these individual commodities is to take the general economic conditions of the Northeast economy, locate various indicators, including those which separate manufacturing from service industries, for instnce, then translate them into forecasts by commodity.

ConRail has done the same thing. It is our analysis that its 5-year-plan can be met in terms of the traffic available from the macroeconomic point of view. Our concern is, principally, whether it will be able to provide the service. We are more concerned about ConRail's ability to provide a high enough level of service to be able to reverse the figures on the tables you see on page 20, than we are that the traffic will be available.

In fact, there are equivalent figures for some competitiors, particularly in the trucking industry, that show that there was much more tonnage handled by those particular companies in competition with ConRail than they did anticipate because ConRail, whether it is because of problems, gave away some substantial amount of tonnage, particularly in certain commodities.

Of the commodities that show the biggest deviation, I would call your attention to the fact that the metallic ores tonnage on table 2, is the result of factors beyond ConRail's control—that 5.51 in the first quarter was a direct result of the strike. So there are some factors in there that are beyond ConRail's control.

Mr. Madigan. In 1 year, stone, clay, glass and other low value materials, they estimated a tonnage of 16 million tons. I assume that this is what that means. They never acheived that.

The following year, they estimated a higher tonnage, and achieved even less. That would seem to suggest that whoever is making those estimates was not even paying any attention to what was going on during the year 1976. What does that suggest to you, Mr. Yocum?

Mr. Yocum. The general performance on the estimating has not been good. It varies by commodity. It does happen that that particular market has more double counting than most of the others, but the performance is still bad. When the double counting is removed, we have gone over the current 5-year projections, which are not in here, on a market-by-market, commodity-by-commodity basis.

It is our conviction that the demand is there, even in the lower value commodities. I would like to point out that both of these forecasts were made in the final system plan, so that they were both completed prior to the middle of 1976. So it is not completely a lack of looking at the first forecast in the case of the second one, because the second forecast was made exactly the same time as the first one. Thus, they were presented no opportunity to learn from the first year. The 16.3 estimate was not made after any of the facts shown in table 1 had taken place. So it was actually an estimate ahead of time, looking 2 years out.

It is not completely uncharacteristic that the further out you go, the greater percentage of error you are likely to have.

Mr. MADIGAN. For the purpose of reassuring me, may I be guaranteed that the same person responsible for this is not now estimating how much money ConRail needs?

Mr. YOCUM. Yes, sir, you may.

Mr. MADIGAN. Thank you, Mr. Chairman.

Mr. MURPHY. Mr. Chairman we probably have 10 minutes to vote. Perhaps we should come back after the vote.

Mr. ROONEY. The committee will recess for 15 minutes.

[Brief recess.]

Mr. ROONEY. The gentleman from New York, Mr. Murphy is recognized. While we are awaiting his arrival, let me ask you a couple of questions with respect to the financial stability of ConRail.

How is ConRail rated for debt in the financial community?

Mr. COLE. As I understood, they had not received a rating. I have Mr. Anderson with me here, who has been following this closely, and he might make a couple of comments on that, if he might, as to why they are not necessarily rated at this time, as other railroads are.

Mr. ANDERSON. To have a rating, you should have a times-charges earned, which ConRail does not have. If you are talking about equipment financing, they could, if they wished, have had a rating of Baa, which would not have been very good for them.

They have had no trouble, to date, in acquiring outside equipment financing. In fact, they far exceeded what we thought they would do.

If you are talking about bonds or mortgage debt, it will be a considerable number of years before they will be eligible to borrow money on their own without a Government guarantee, which I don't think they should have.

Mr. ROONEY. It is my understanding that it is very difficult for railroads with a Baa rating to receive any kind of funds in the private market. Is that correct?

Mr. ANDERSON. The Baa rating is limited to railroads who are in or near bankruptcy. The Pennsylvania Railroad, for instance, is listed as Baa.

Mr. ROONEY. How does ConRail rate with respect to other railroads in the country?

Mr. ANDERSON. They are really to a point where they are able this year to take about $300 million of their own equipment paper, this is well secured paper, equipment that could be sold——

Mr. ROONEY. It will be well secured if we pass this bill.

Mr. ANDERSON. It would be well secured if you do not pass the bill.

Mr. COLE. Whether the financial community will look to that alone.

Mr. ANDERSON. If you do not pass this bill, ConRail would have more trouble of paying for it than getting it. But the equipment is so good that it would go. So don't count rating, when you are counting equipment placing. At this time, hopper cars and that sort of thing are very much in demand.

Mr. ROONEY. Do I understand that ConRail obtained $6 million in private sector equipment financing in 1976?

Mr. COLE. It was more than that.

Mr. ROONEY. In the private sector?

Mr. ANDERSON. It was $10 million that they got.

Mr. ROONEY. This is from USRA, those are your figures.

Mr. ANDERSON. That was closed. That was not committed.

Mr. ROONEY. You have $141 million in 1977.

Mr. ANDERSON. They had a commitment of $175 million in 1977.

Mr. ROONEY. Has this amount of financing been in accordance with the plan?

Mr. COLE. It exceeded it by far. We had not anticipated that they would need equipment for the first 2 years. Whatever they needed, we assumed, because of the startup and the financial problems of getting underway, that the financing community might be slow coming behind them in this equipment, therefore, we had projected for equipment financing for the first 2 years that the Government funds would cover it.

Mr. ROONEY. Do you believe that ConRail will be able to receiving the additional $900 million in private sector financing?

Mr. COLE. The record to date indicates that they may be able to. We were a little pessimistic that they would be able to cover that amount this year. But they have been so successful in getting commitments for their funding this year that we are optimistic now that they may be able to reach that amount of $900 million.

Mr. COLE. The record to date indicates that they must be able to. We were a little pessimistic that they would be able to cover that amount this year. But they have been so successful in getting commitments for their funding this year that we are optimistic now that they may be able to reach that amount of $90 million.

Mr. ANDERSON. If the bill is passed, they will be very close to reaching that goal.

Mr. ROONEY. On page 7, and continued on page 8 of your statement, you indicate that there is a possibility that ConRail would need a public investment in addition to the currently projected $1.3 billion.

Mr. Cole, would you agree that if additional financing of some reasonable amount is necessary, that in your opinion this would not automatically mean that the ConRail concept should be abandoned in favor of some other type of solution?

Mr. COLE. Yes, I would agree to that, Mr. Rooney. The $1.3 billion is ConRail's projection. It was based on assumptions of last fall which did not take into consideration the variety of factors that have already changed, starting with the prolonged coal strike, a little tougher winter, more locomotive problems.

If our projections indicate that it may take a little longer before they reach that turnaround in revenues, which Mr. Florio and I exchanged comments regarding, it just means that it will take longer. It does not mean that the ConRail concept is not the answer, but that it will take a longer time to implement. The $1.3 billion is the incremental amount.

Mr. ROONEY. Would you say that the $1.3 is a conservative estimate?

Mr. COLE. Yes. It is a very conservative estimate on a very optimistic plan.

Mr. ROONEY. I might say, Mr. Cole, I am completely in agreement with the $1.3 billion. But you have $2.1 billion, and now you are after $1.3 billion, and that is conservative. It reminds me of a replay of the Amtrak hearings that we have had over the years.

Let me say this, I would suggest that you go back to your board. This committee and this Congress will not tolerate $1.3 billion this year, another estimate next year, and one the following year. I think that you had better get the trains on the tracks.

Mr. COLE. That is why we are not running in without a final analysis to say that the $1.3 billion is the number. We also intend that if the $1.3 billion does not do it, and it takes *x* number of dollars more, when USRA comes back for *x* dollars more, we will have a variety of alternatives and the cost of those alternatives. We will not just come back for more money.

Mr. ROONEY. The gentleman from New York, Mr. Murphy, is recognized for 5 minutes.

Mr. MURPHY. Thank you, Mr. Chairman. I indicated earlier that we have some very serious problems in New York with ConRail. We tried to address them back in 1976 with some amendments to the basic act. I will not go over those in detail, but how close a supervision does USRA have on ConRail?

Mr. COLE. This is an area. Mr. Murphy, that was simply an amendment that provided for port equalization under the Interstate Commerce Act. We have looked upon the ICC as the enforcer of that. We have been following the activities here, and have some knowledge of the issues involved, but we have not been enforcing nor in any way dictating to ConRail how it ought to approach that issue.

Specifically, I think that we understand what has been happening and the issues involved, and what ConRail has been doing.

Mr. MURPHY. How close a supervision do you have on ConRail, and who does it, what number of personnel?

Mr. COLE. Fundamentally, from the beginning of the 3R Act, the financing agreement, the way that Congress provided for USRA as a monitor rather than a supervisor of ConRail, we are not in any way supervising ConRail.

Mr. MURPHY. But you know what goes on?

Mr. COLE. We attempt to find out what goes on.

Mr. MURPHY. You know what the law says.

Mr. COLE. We know basically what the law says. We have not made any legal interpretations to see whether ConRail was doing it. We felt that this was the ICC's basic role.

Mr. MURPHY. You communicate with ConRail?

Mr. COLE. On this issue, we have dialogs with them, but I don't think that we have communicated with them in any direction.

Mr. MURPHY. Basically, there have been two problems. One of them between points in the Midwest, better than 300 miles from Northeastern ports, which are ports between Maine and Virginia. We find that a movement from Peoria would be $82 cheaper if it was a trailer on flatcar, or a container on flatcar movement.

It was clearly established in 1963 that freight moving from that area to Northeastern ports would be on a nondiscriminatory rate basis. That is, to keep the ports equalized or competitive amongst each other. But we have the TOFC and COFC rates come in under a different basis. They are not interpreted as cargo moving in a boxcar.

I think that the intent of the act was, of course, to have equalization on cargo, whether on trailers on flatcars or whether in containers to these ports.

Now, we go to an amendment back in 1976 which not only talked about the question of between those points, that is the Midwest and the Northeastern ports, but we added the words, after "between," "and within," so that we corrected a problem as it affected one particular port, of course the Port of New York, and that is to have an equalized rate within that port, whether that rate was to the New Jersey side of the port, or to the New York side of the port.

Now, I will read from the record.

As the USRA final system plan recognizes, volume 2, page 10, the New York Harbor is the only port on the Eastern seaboard where because of a lack of direct rail access, carfloat operations are required to serve docks and other locations. Moreover, USRA has stated in its Preliminary System Plan, page 360, "Traditionally, rates to the New York area have been equalized. This equalization was predicated on a premise that the New York City or New Jersey shoreline were integral parts of a single economic entity."

Indeed, the USRA Final System Plan, volume 2, page 246, acknowledges testimony that a surcharge on rail carfloat operations in the New York Harbor would ruin New York as a Port City.

Therefore, this language is adopted in this part of the law.

Yet, what do we find today? We find that we do not have an equalization of rates within that port. We find that ConRail has gone to the point to be a total monopoly of rail service into that port, discriminating against the New York side, the Brooklyn waterfront, the Staten Island part, as well as inhibiting the Chessie System from being able to move from Camden or Philadelphia up to the areas in New York where we have direct rail communication.

Now, it is a ConRail problem. It is not an ICC problem. ConRail has circumvented, as much as I can see, the intent of the law.

Would you address yourself to that, please?

Mr. COLE. Let me turn to Mr. Yocum, who has been following this issue, and understands the port equalization situation both from his monitoring with us, and from his past experience several years ago with the Chessie System.

Mr. YOCUM. The background on the boxcars versus the TOFC and the COFC is exactly right. Historically, ConRail personnel have addressed itself to this, and I think that they will be prepared to talk about it when they come in here tomorrow.

Their interpretation obviously is that they have complied with the law. The setting of the rates and the enforcing of how the rates are applied is a function of the Interstate Commerce Commission. On that basis, and also because there are court suits involved in this particular matter, we have allowed this particular matter to be worked between the Commission and ConRail, and it is now being resolved in the courts.

Mr. MURPHY. Mr. Yocum, who files the rates with the Interstate Commerce Commission? ConRail does.

How can you say that it is the Interstate Commerce Commission that is discriminating. It is ConRail that discriminates when they file the rates.

Mr. YOCUM. If the rate is discriminatory, it can be disallowed by the Commission.

Mr. MURPHY. After how long a period of time; 18 months?

Mr. YOCUM. No, sir. Quite often those rates, when such a finding is made, are not even allowed to apply initially. They are not allowed to go into effect. There is what is called an investigation and suspension proceeding, which prohibits the rates from going in initially, and that is generally what happens rather than their being investigated after they are in effect.

Mr. MURPHY. Has ConRail established commodity tariffs which do not include points on the New York side of the port?

Mr. YOCUM. Yes, there are tariffs like that. There are some physical limitations for some of those tariffs in that there are clearances on the New York side which do not exist on the New Jersey side, and there are other specific circumstances.

The TOFC or the COFC question, to some extent, is based on the clearance question, and where the physical limitation is such that the carrier cannot take the traffic into the port, that obviously precludes it from being in the rate.

Mr. MURPHY. In such cases, does ConRail require an additional payment when the cargo is destined for the New York side of the port?

Mr. YOCUM. This is a side that has come into play because of the settlement of the drayage charge. On the COFC and TOFC tariffs, yes, sir, there are additional drayage charges.

Mr. MURPHY. What about the law that says rates will be equalized within the port, and here you are admitting that you are adding surcharges to rates for that port, when they go to the New York side of the port?

Mr. YOCUM. The question is one which you addressed earlier, which is whether the TOFC or COFC matter is the same as the boxcar. As I have said previously, this is something that is being looked at by the courts, and this is something over which the ICC specifically has jurisdiction. Therefore, we have not pursued it.

Mr. MURPHY. You know that the State of New York has put $9.9 million into the Brooklyn waterfront facilities, and $2.2 million has been spent in finalizing a link into the container port at Holland Hook. Yet we have surcharges on the Staten Island Railway Co., and are not the same rates that are charged to the Port of New York and New Jersey Authority for Port Elizabeth and Port Newark, again clearly in circumvention, I think, of the intent and the spirit and the letter of the act which I just read to you.

Mr. YOCUM. The Holland Hook facility in 1976 operated at approximately 50 percent of its capacity with 155,000 containers. Many of those did come to and from ConRail. However, as you know, they came from the New Jersey side. They came from Kearney and the meadows. They did not come by rail.

One of the things that historically is involved in this is the historical relationship of the rail carriers on Staten Island and in the New York-New Jersey area. As you know, the Staten Island Road was a part of the general confederation of the Chessie System. There were routes in connection with Reading and CNJ.

With the amount of capacity that ConRail inherited with the Lehigh Valley facility at Oak Island, the facilities at Craxton, and the ConRail facilities at Kearney and Weehawken, there was enough capacity to handle the business that way. That is one of the principal reasons why the business is handled through Kearney and these other piggyback locations rather than on the SIRC itself.

Mr. MURPHY. The reason for the problem with the CIRC is that ConRail operates a monopoly to New York. There is no competing line, and there should be a competing line on the Chessie route right up to the SIRC.

I will ask you this question. Is the Kearney facility overcrowded?

Mr. YOCUM. Over the past winter, the ConRail facilities were badly overcrowded. This overcrowding started in connection with the Longshoremen strike. It continued through the winter. There were very serious problems with the way the winter itself was handled at those facilities. There were many trailers that were frozen into the ground, and were there for a substantial length of time. It was not until the last 3 weeks that the imposition of seldom used bill of lading provisions allowed those terminals to become fluid.

Mr. MURPHY. Has ConRail been trucking traffic from Philadelphia to the Port of New York?

Mr. YOCUM. It has, on some occasions, in order to provide better service. The traffic that is coming from Philadelphia to New York, is not originating in Philadelphia. It is really through business that is terminating in New York. In a few cases, where there were interruptions due to problems of an operating nature, in order to expedite the business, some of that traffic has been drayed. That is right.

Mr. MURPHY. Will ConRail be prepared to give the Chessie System trackage right on a nondiscriminatory basis between Philadelphia and Cranford Junction?

Mr. YOCUM. As Mr. Cole has mentioned, I have met on several occasions jointly with representatives of ConRail and the Chessie, and there are a large number of projects where those two roads are cooperating, somewhere in the neighborhood of 50 at this point, when all counted.

I would have to tell you that there has been no suggestion at any of the times that I have attended those sessions of such traffic rights.

Mr. MURPHY. I don't know how I can personally support those appropriations, or authorizations, really, when I have seen the operations of USRA and ConRail in permitting the Pennsylvania Railroad to sell off its tugs and attempt to sell off its carfloats and the movement to try and isolate further the portions of the Port of New York on the New York side.

Then to see ConRail come in and file with the ICC rates that are clearly in circumvention of the act that we all cooperatively tried to pass.

I will leave that with you, and perhaps you will have a little closer communication with ConRail in this area in the future. I will be looking forward to seeing ConRail tomorrow. I have no further questions.

Mr. ROONEY. Thank you very much, Mr. Cole.

Mr. COLE. Thank you very much, Mr. Chairman, and members of the subcommittee.

Mr. ROONEY. Our next witness will be Mr. J. Robert Morton, president, National Industrial Traffic League. He is accompanied by Mr. James E. Bartley, executive vice president; and Mr. John F. Donelan, general counsel.

STATEMENT OF J. ROBERT MORTON, PRESIDENT, NATIONAL INDUSTRIAL TRAFFIC LEAGUE, ACCOMPANIED BY JAMES E. BARTLEY, EXECUTIVE VICE PRESIDENT; AND JOHN F. DONELAN, GENERAL COUNSEL

Mr. MORTON. I am J. Robert Morton. I submit this statement on behalf of the National Industrial Traffic League whose headquarters are here in Washington. In making this presentation for the league, I am appearing as president of the NIT League. I am employed by Combustion Engineering, Inc., Stamford, Conn. as vice president of corporate transportation and distribution. My experience in the field of industrial traffic management spans more than 40 years. I am accompanied by Mr. James Bartley, executive vice president of the National Industrial Traffic League in Washington, and Mr. John F. Donelan, general counsel for the league and senior partner in the Washington, D.C., law firm of Donelan, Cleary, Wood and Maser.

Mr. Chairman, and members of the committee, I want to thank you for permitting us to make this statement, and for also including our statement in the record. I want to thank you and we want to do all we can to assist your committee in the resolution of this question of the money for the USRA and for ConRail.

The league's primary concern is to provide for the Nation and all its shippers a sound, efficient, well-managed transportation system, privately owned and operated. The league is dedicated to insuring a system of transportation adequate to meet the needs of the commerce of the United States and the national defense.

To represent its members, the league regularly appears before the Interstate Commerce Commission, the Department of Transportation, and other transportation regulatory bodies and agencies as well as offering input concerning transportation matters before the committees of the Congress of the United States. My appearance here today is in support of H.R. 11492.

The league and its members have been very much concerned and involved with the problems confronting the railroad industry, particularly in the northeastern and middle western areas of the Nation. The league actively participated in the congressional hearings leading to the enactment of Regional Rail Reorganization Act of 1973, the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94–210, and the Rail Transportation Improvement Act, Public Law 94–555, the so-called son of ConRail bill.

It has commented on the numerous proceedings surrounding the preliminary and final system plan, the enactment of Public Law 94–210, ex parte 329, the "Standards and Classifications of Rail lines of the United States," and the Rail Services Planning Offices' recently published rail merger study. Most recently, league members have offered their thoughts and input to the Federal Railroad Administration in Docket No. 401–2, development of a midwestern rail system plan.

The U.S. Railway Association, as well as the league members, recognized the extremely difficult and complex task to be faced in the coming years. USRA noted:

> A task so complex as the restructuring of the rail system in the Northeast Region must be evolutionary. The American economy owes its essential dynamism

to the ability of individual firms to shift, to adjust, to adapt, to give incentives and to test new ideas and new markets. What is important is that economic forces be allowed to work themselves out within an established framework of fairness and guaranteed continuation of essential services. The very nature of the competitive market place requires flexibility so that corporations may adapt to changing conditions.

In our statement to the rail Services Planning Office with respect to the preliminary system plan, we stated:

The limitations of time and the complex nature of the financial projections preclude any detailed examination. The projected financial pro formas are based on the occurrence of many factors including increased traffic volnme, selective rate increases, branch line subsidies, passenger subsidies, etc. There are many factors, including the general state of the economy, which could preclude ConRail from realizing the financial position projected. Failure to increase volume or failure to obtain selective rate increases on a timely basis are but two factors which could jeopardize or nullify successful reorganization.

Quoting further:

Recognizing the critical importance of these financial projections and the need to insure that actual results compare favorably with them, the League suggests that USRA provide detailed, periodic reports of the actual results vis-a-vis the projections, in addition to its annual report to the Congress and the President. Such periodic reports would allow all interested parties the opportunity to suggest appropriate changes, on a timely basis, if such changes become necessary or appropriate.

On April 1, 1976, when ConRail started up operations, officials at ConRail encountered a significant surprise factor to find that the rolling stock acquired from the bankrupt rails was in much poorer condition than projected in the final system plan.

During the months prior to conveyance the bankrupts evidently allowed their rolling stock, both locomotives and freight cars, to deteriorate to a level not anticipated plus roadbed rehabilitation, well beyond what was originally anticipated.

In its 5-year business plan, released by ConRail on Februray 15, 1978, ConRail said, and I quote:

In reporting on the Railroad's 1976 performance to the Congress, USRA stated "the freight equipment conveyed to ConRail was in worse shape than anticipated." The report then examined the pattern of locomotive and car bad order ratios and indicated, despite the fact that ConRail's 1976 equipment repairs exceeded the Final System Plan estimates, that there is yet no clear pattern of improvement, with respect to equipment.

Concluding the section regarding equipment, ConRail said further:

In sum, equipment problems have created one of the most significant issues with which ConRail has had to deal in the Plan. With equipment retirements higher than anticipated, with car hire and ownership costs increasing, and with a compelling need to improve service capability through the provision of sufficient, reliable cars, ConRail's equipment expenditures are projected to exceed FSP estimates by a substantial margin.

The problems outlined above regarding equipment repair and maintenance, the league believes, further justify the passage of H.R. 11492.

In submitting their 5-year business plan, February 15, 1978, ConRail recalled the USRA caution that the final system plan was "heavily dependent on future projection of uncertain events" and reiterated their belief that the ConRail structure still provides the best opportunity to fulfill Congress's goals.

The league notes that ConRail has succeeded in meeting many of the goals established for it in the final system plan, including the assemblying of a dedicated management team, substantial improvements in the physical plant and equipment, and positive steps toward the encouragement of profitable traffic.

The league also notes the extreme difficulties encountered during two of the severest winter seasons on record along with a coal strike of lengthy duration resulting in massive losses of revenue producing tonnage.

League members believe that ConRail does represent the best opportunity to meet the needs of the region. As we have previously indicated, the stake of the members of the league is literally enormous in seeing to it that the objective of a viable, efficient, and healthy railroad system is achieved. We believe that the additional appropriation of $600 million to be authorized to the U.S. Railway Association for purposes of purchasing the securities of the Consolidated Rail Corp. is appropriate to insure the continuation of essential services, the continuation of improvement and rehabilitation efforts and the ultimate retention of this major enterprise in the private sector of business. The league believes that ConRail's 5-year business plan is realistic in view of the changed conditions since conveyance started 2 years ago. For the reasons stated, the league urges your favorable support of H.R. 11492.

As president of the National Industrial Traffic League, I want to thank the subcommittee for this opportunity to express our views.

Mr. ROONEY. Thank you very much, Mr. Morton.

On page 3 of your statement, I quote you, you state that periodic reports should be submitted, which allow all interested parties the opportunity to suggest appropriate changes, on a timely basis, if such changes became necessary or appropriate.

Obviously, Mr. Morton, we have reached the point where changes are necessary and appropriate. My question is, do you have any suggestions at this time, other than your recommendation for the additional financing in the amount of $600 million?

Mr. MORTON. We have no recommendation at this time. We have not had the opportunity to make projections or forecasts. We look to the USRA and the Federal Railroad Administration and others to make those projections.

Mr. ROONEY. Mr. Morton, as a shipping organization, would you give the committee an overall view as to the adequacy of ConRail to the shippers that you represent; are they satisfied, dissatisfied, happy?

Mr. MORTON. I would like to speak first from my position with Combustion Engineering, and I would say that we are satisfied. I just recently made a poll of several of our shipping locations on ConRail, and we are satisfied with the service that we are getting.

From the standpoint of members of the league, we have had no severe criticism. There has been some in the winter, Chairman Rooney, and so on, but overall I can say that the service has been satisfactory.

Mr. ROONEY. Thank you very much.

Mr. Skubitz?

Mr. SKUBITZ. On page 4 of your testimony, the first paragraph, you seem to favor ConRail going full speed ahead with the purchase of new equipment. What effect is that having on other railroads which are placing orders for new equipment?

Isn't that working to their detriment and making difficult for some of the competing ones to get new equipment, such as the Chessie?

Mr. MORTON. I am not sure, Mr. Skubitz, that I am in a position to really answer that question. I think that the other rail carriers are.

Mr. SKUBITZ. That is one of the complaints that I have received, ConRail going ahead and placing orders, the other railroads say that it makes it difficult for them to get any new equipment.

Mr. MORTON. Let's put it this way. I think that right now, we, in the United States—let's forget ConRail and let's forget the Northeast experience—the railroads have experienced shortages of equipment. I think that this is true nationally.

I think that any equipment that is added to the general railroad pool, whether it is added by ConRail or any other railroad, it flows between the roads and this eventually helps the shippers.

Mr. SKUBITZ. ConRail is rather notorious for holding other people's equipment, getting equipment and cars from other companies, and holding them on their lines.

Mr. MORTON. I am not familiar with that, sir.

Mr. SKUBITZ. I have received a lot of complaints by farmers and grain shippers that there is a critical shortage of hopper cars. The Agricultural Department places that blame on ConRail's door. Do you have any comment to make on that?

Mr. MORTON. No, I haven't. I am not familiar with it.

Mr. SKUBITZ. Many small businesses are being driven to the wall because of their inability to get cars. Do you have any comment on that?

Mr. MORTON. No, sir.

Mr. SKUBITZ. The shippers, are you familiar with their problems?

Mr. MORTON. I will let Mr. Bartley answer for the league.

Mr. BARTLEY. As Mr. Morton pointed out earlier, the Interstate Commerce Commission, at the present time, has announced that this is the most severe shortage of freight carrying equipment throughout the United States that has been experienced since the early sixties. I think that this is a real bad situation for all the shippers, whether they are large, small, or whether they are grain shippers or pipe shippers, steel or scrap, or whatever.

Anything to get more equipment into the traffic flow is one of our objectives.

Mr. SKUBITZ. I have been here for 35 years, and I have been hearing about car shortages for 35 years, and it is always the most severe, but each year it gets worse. I am beginning to wonder when it is going to start improving.

Mr. BARTLEY. That is what we are looking for. We are looking for solutions. We have made several recommendations over the years.

Mr. SKUBITZ. I have no more questions.

Mr. ROONEY. Thank you very much, Mr. Morton, and your colleagues.

The subcommittee must apologize to Mr. Snyder and Mr. Dempsey, but we have to again go and vote. We will then come back and conclude. We will take a 10-minute recess.

[Brief recess.]

Mr. ROONEY. Our next witness will be Mr. James R. Snyder, chairman, Legislative Committee, Railway Labor Executives' Association, and national legislative director, United Transportation Union, accompanied by Mr. William J. Mahoney, attorney.

Mr. Snyder, you may proceed.

STATEMENT OF JAMES R. SNYDER, CHAIRMAN, LEGISLATIVE COMMITTEE, RAILWAY LABOR EXECUTIVES' ASSOCIATION, ACCOMPANIED BY WILLIAM J. MAHONEY, COUNSEL

Mr. SNYDER. Thank you, Mr. Chairman and members of the subcommittee. As you so ably pointed out, my associate is Mr. William Mahoney, who is counsel for RLEA. We have a very short statement, and with your permission, I will just read it. It is very short, Mr. Chairman.

Mr. ROONEY. I have heard you testify before this subcommittee many times, and all of your statements are usually short, concise, and right to the point.

Mr. SNYDER. Not always, but most of the time.

The Railway Labor Executives' Association appreciates this opportunity to present the views of their members and some 80,000 to 85,000 railroad employees they represent on ConRail in support of the continued existence of ConRail as the only feasible concept yet to emerge as a possible solution to the Northeast rail transportation crisis.

As you know, rail labor vigorously opposed the Penn Central merger until it became obvious to us that the Interstate Commerce Commission was going to approve that merger as it had approved every significant merger placed before it since 1957.

In order to protect the employees of the merging railroads, we negotiated an employee protection agreement with the management of those railroads. At that point our active opposition ceased although we continued formally to oppose the merger.

The ICC, of course, approved the merger, and the employee protection agreement which we negotiated became the ICC-imposed protective formula under section 5(2)(f) of the Interstate Commerce Act.

I might say right here that contrary to the comments of some persons who can most charitably be described as uninformed, the Penn Central employee protection agreement played virtually no part in the bankruptcy of that railroad from a cost or expense point of view. This conclusion is confirmed by the evidence placed in the record before the ICC more than 1 year following the merger at a time when the RLEA sought to have protective arrangements provided employees of Penn Central subsidiaries who had been affected by the merger. The cost of employee protection was miniscule when compared with the hundreds of millions of dollars in revenue that the merged railroad was losing at the time.

The employee protection agreement did play an unexpected adverse role at the outset of the merger. As a result of the agreement's execution well before the ICC approval order became final, the implementing agreements adjusting seniority rights and so forth, which the protection agreement required, were also completed and executed prior to the "merger day." When that day came, the two major railroads involved were thrown together too fast, and instead of the gears meshing, they stripped. Had the implementing agreements not been in place on merger day, the physical consolidation of the operations would have had to await their successful negotiation. Such a delay might well have permitted a more intelligent merger of the rail properties involved.

Rail labor realized that the Penn Central could never be pulled from the operational and financial quicksand into which it had fallen, by a Federal reorganization court applying the rail bankruptcy law. Rail labor early on sought the help of Congress. We knew that if Penn Central ceased operations totally or in substantial part, there would be economic chaos in the Northeast and very probably throughout the United States.

We participated in deliberations with the management of the Nation's railroads in an effort to arrive at a solution. We worked continuously with the members of this subcommittee and its staff as well as with your Senate counterparts to resolve this crisis. Along with you and the rest of the Congress, we concluded that ConRail was the only proposal that was acceptable at that time. In our judgment, it remains the only acceptable solution to the Northeast rail crisis.

I believe the validity of this position is confirmed when we look at the alternatives: Abandonment, controlled transfer, and nationalism. The first of these long has been rejected as unacceptable. The second alternative would simply bleed off the very vest, most lucrative lines to already strong railroads while abandoning the remaining lines, many of which would not only be profitable, but would constitute a transportation lifeline for many industries and communities. At least, in the various forms which controlled transfer has been presented thus far, it fails to achieve a balance of public benefit over public detriment.

As for nationalization, we believe that this alternative is the final rational solution if—I stress "if"—the ConRail concept proves to be a failure. In my opinion, we are a long way from having to make that decision.

There is no need to choose alternatives to ConRail as yet because ConRail has not proved a failure. Indeed, considering the disaster ConRail took upon itself to cure, one should be at least mildly encouraged at the quiet but effective progress made in a number of of areas, including upgrading of equipment and trackage.

Rail labor has made vigorous efforts to cooperate with ConRail in administering the provisions of the various laws applicable to the employees of ConRail. In an area of complex operational and legal problems, the cooperation between management and labor has been exemplary. A committee was established by the RLEA to confer with the chief labor officer of ConRail and his staff on all matters of mutual interest to the parties involving the application of the law. This committee arrangement has proved extremely effective in correcting and in avoiding innumerable day-to-day problems which have or would have arisen.

This committee reviews all claims under the employee protection provisions of the law and presents the collective views of its members as to the validity of the proposed claims, thus avoiding presentation to arbitration of meritless claims.

While we all knew the Penn Central was in bad shape before and during consideration of the Regional Rail Act, I don't believe anyone realized how totally deteriorated the Penn Central plant became between enactment of the law in January 1974, and the date ConRail took over in April 1976. It was a very steep hill that had to be climbed. Considerable progress has been made, but we have a very long way to go.

After all alternatives are considered and evaluated, we believe the Congress will continue to support the ConRail concept as it must be supported if it is to have a chance to succeed.

We support the increased Federal investment in ConRail, as well as H.R. 11492, which was introduced by Chairman Staggers and yourself on the financing of ConRail.

That concludes our statement, and we will be delighted to answer any questions that you have.

Mr. ROONEY. Thank you very much, Mr. Snyder.

On page 3 of your testimony, you gave three alternatives to the ConRail concept. You did not mention the concept of Confac or Mr. Fishwick's Firewall. I wonder if you would comment on what effect you think these alternatives would have on rail labor.

Mr. SNYDER. I am really not familiar with that, Mr. Chariman. We are not familiar with Mr. Fishwick's proposal, as you have labeled it. Mr. Mahoney advises me of the same.

Mr. MAHONEY. I am not at all familiar with Mr. Fishwick's Firewall.

Mr. ROONEY. That came up in debate on ConRail in 1975 and 1976. Mr. Fishwick was opposed to ConRail, and he put up his own proposal.

In other words, you want to stay with the basic ConRail concept. Is that correct?

Mr. SNYDER. Absolutely.

Mr. ROONEY. Yesterday, Mr. Snyder, I was informed that it was believed that ConRail has a surplus of employees. They talk about something in the neighborhood of 90,000 employees in ConRail. I wonder whether or not you agree that ConRail has a surplus of employees, and whether ConRail would be prohibited by the provisions of the 4–R Act or may be permitted by the 4–R Act to cutback.

Mr. SNYDER. Mr. Chairman, if my memory serves me correctly, when ConRail took over, became effective, it had something like 95,000 to 98,000 employees. It is my understanding that the employment ratio now is around 85,000. There have been quite a few cutbacks in the various departments, operating and nonoperating, of ConRail.

As you know, there are negotiations going on now by very capable committees in regard to the upcoming contract, very capable men on both sides. I am sure that where appropriate agreement should be made regarding the personnel, the necessary personnel that is required to operate ConRail, that this would be handled very satisfactorily in accordance with the Railway Labor Act.

Mr. ROONEY. Mr. Snyder, as you know, the labor force is protected by the provisions of the 4VR Act, depending on the length of service. I wonder, would your union support further reductions in ConRail's labor force to achieve profitability, as long as you have this protection?

Mr. SNYDER. First of all, Mr. Chairman, we have to consider the safe operation of the railroad. As it has been pointed out before this committee in the last several days, the derailments that have occurred here, we have to look at this very carefully.

I know that the rail management would like to cut way back, and some of them would not have the concern necessary for the same operation. We are very much concerned about the safe operation. We are very much concerned about the railroad industry as a whole, and their making money, because when they make money, then we can have what we hope to have, a reasonable contract out of it.

I don't think that we can cut back very much and have a safe operation. If you look at the employment since 1950, the railroad industry has been cut back worse than any other industry in the United States.

Mr .ROONEY. What was it in 1950?

Mr. SNYDER. It was 1.2 million, and today it is under 500,000. So if we are going to stay in business and operate a safe railroad for the customers, and stay competitive with other forms of transportation, you will have to have the personnel to do it, and to do it in a safe operation.

Mr. ROONEY. I don't know whether you are aware of it, Mr. Snyder, but the argument that I heard yesterday was that other privately owned railroads—of course ConRail is a privately owned railroad—operate with less employees than does ConRail.

Mr. SNYDER. That could be true in some cases. In fact, in our own organization, for example, we have 500 contracts in the UTU alone. The number of personnel that might be required to operate trains in your part of the country, and in my part of the country, down in the flatlands, it can vary because of the terrain which they operate over.

So there is possible agreement there to meet those needs.

Mr. ROONEY. Thank you very much. I have no further questions.

Mr. Skubitz?

Mr. Snyder, how many employees are there in the UTU?

Mr. SNYDER. It is 250,000.

Mr. ROONEY. How many crafts do you represent?

Mr. SNYDER. We represent the conductors, the brakemen, flagmen, baggage masters, firemen, switchmen, some dining car stewards, and a certain percentage of engineers. They are primarily all operating. We do have, Mr. Chairman, approximately 10,000 bus drivers that we represent, and these are primarily in the West.

Mr. ROONEY. Does the gentleman have any questions?

Mr. SKUBITZ. I really have just one question, Mr. Chairman.

For years, the rail labor have used the two sizes of mile limitation as a local map. Has there been any change in that?

Mr. SNYDER. Yes; first of all, the railroads have done quite a job of brainwashing the shippers, and I might even add Members of Congress up here, on the size of the crews, and all.

Over the years, complying with the rules of the Railway Labor Act, these have been negotiated. Agreements have been negotiated when we had reduction in the crews, as far back as 1963. We have negotiated since that time.

As I pointed out, we cannot negotiate ourselves out of business. We cannot negotiate the railroads out of business because you have to have a safe operation to be competitive out there.

The 100-mile day, I am very familiar with that, inasmuch as on my division in the Southern Railway, I operated on a 100-mile railroad or part of it. My seniority was 275 miles, but I operated on 100 miles.

Much has been said about that, but I have to point out here that we are paid for going on a 100-mile base, and that constitutes 1 day's pay, 8 hours. In some cases, it takes less than 8 hours to make than 100 miles.

In my particular division, where I operated as a conductor and as a brakeman/flagman——

Mr. SKUBITZ. That goes back so far that it goes back to when I was a kid.

Mr. SNYDER. That has been the fate of the railroads. There has been much said about the passenger crews operating on there. The passenger crews in the train service is 150 miles, and not 100 miles. In freight service, it is 100 miles.

I know that I came up as a local chairman on the railroad, and this serves as a good purpose for the railroad. We had many of our people who got injured, and they couldn't work in freight service, so we made provision for them to work in passenger service because it was a little easier work. There was no question about that.

I will give you an example of how that works. Operating on a passenger run of 176 miles, 7 days a week——

Mr. SKUBITZ. When was that?

Mr. SNYDER. In 1963 was the last time that I operated in that capacity. Those trains are no longer there. Very few of those trains are left anyway.

I would leave home. I might be called at 7 o'clock at night. I would make the run to Macon, Ga., between Macon and Atlanta, in about 3 hours or 4 hours. I would leave for 3 hours, which was not long enough to go home and go to bed. Then I might be called to come back, and I would get home at about 9 o'clock the next morning. This went on for 7 days a week. That is the type of operation they have.

It does not sound all that easy, and I may point out here that the railroads are paid by the mile. There is nothing wrong with the crew members being paid by the mile. The truckers are getting paid by the mile, and I don't hear much fussing about that.

Mr. SKUBITZ. Do you think that there will be a breakthrough in your contracts now with ConRail, or not?

Mr. SNYDER. I could not answer that. Maybe they don't want to bargain this year. In the second place, it does not address itself to my department.

I pointed out to the chairman that there are good committees on both sides, good management in ConRail, and good officers for the UTU. They are complying with the Railway Labor Act, and they are doing a good job. I am sure that they will come up with reasonable agreements. I think, that they can live with.

Mr. Skubitz, can I ask you a question?

Mr. SKUBITZ. No; I am not a witness.

I am told that if the Railroad brothers and ConRail get together, they will cut down by $500 million. But if they don't, they will be back for another $500 million more.

Mr. SNYDER. I don't know where you are getting your figures. I have not seen those figures, and my able attorney advises me that he has not seen those figures either.

Mr. SKUBITZ. It is always good to have you here. The only regret that I have is that I am not going to be here any longer.

Mr. SNYDER. We regret to see you leave, Mr. Skubitz.

Mr. SKUBITZ. Thank you.

Mr. ROONEY. Thank you very much.

Our final witness is the very distinguished president of the American Railroads, Mr. William H. Dempsey.

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

Mr. DEMPSEY. In contrast to Mr. Snyder, I think that I am breaking precedent by submitting a short statement to you, and I would ask that it be made part of the record.

Mr. ROONEY. Without objection, the statement will be made part of the record.

Mr. DEMPSEY. I will be even briefer in my oral summary of the statement.

I am glad to be able to be here to state the views of the association with respect to the matter of ConRail funding. The industry, of course, has, as you know, played an important role in the development of the 3-R Act, which dealt initially with the major railroad transportation crisis in the Northeast and the establishment of USRA and ConRail.

It also played a central role in the development of the subsequent supplementary legislation. We have supported the ConRail concept from the outset. We think that the success of ConRail is terribly important, indeed indispensible to the success of the railroad operations throughout the United States. We have been vitally interested in what happens to ConRail.

During the 2 years that ConRail has been in existence, it has made, as other witnesses have said, some great, substantial progress, and at the same time it has been beset by—I guess I will use the phrase used by the chairman, the traditional phrase "acts of God." I only hope that God will understand. I have never understood the perversity that labels floods and hurricanes, and devastations of all sorts, and loss of life and limb as "acts of God." In any event, this is what has happened, not only in the Northeast, but also throughout the United States.

We have had two of the most severe winters that the railroad industry has experienced in a long time. We have had the coal strike. We have had the decline in the steel industry. We have had such things as the unanticipated bad condition of its equipment.

Given those circumstances that were not and could not really have been foreseen, it does seem to us the progress that ConRail has made is at least reasonably encouraging.

Now, ConRail has produced a new 5-year plan, which would indicate that in the judgment of ConRail management more time will be needed to come to a firm conclusion about whether ConRail in its present form will succeed, and that more money will be needed, more precisely, in their judgment, $1.2 billion additional Federal funding.

Now, we have no way of measuring the accuracy of this estimate, and we have no way, really, of appraising how much additional time should be allocated to a continuation of this undertaking. But, we are convinced that significant additional time should be allocated to the continuation of this undertaking. We are convinced that significant additional funding should be provided, and that sufficient additional time is necessary in order to give the ConRail experiment a fair test for success.

Therefore, I am here to urge that the committee take those steps; that is to say, provide enough additional funding and enough additional time, so that a fair chance will be given to ConRail under its present structure.

I add only two notes of caution. First, we do believe, that whatever funding form should be adopted, that it should not prejudice the ability of other railroads to take advantage of financial assistance under the provision of the 4–R Act of 1976.

My second caution is this. I have stated that I think ConRail is vital to the future of our industry. There are obvious considerations of equity involved in heavy Federal funding of such a huge enterprise that competes so extensively with other roads which must manage without this type of assistance. Therefore, I would urge that ConRail be monitored on a continuing basis, and that there not be, as the chairman indicated at the outset, unlimited sums of money dedicated to this experiment.

If in some reasonable period of time, with some reasonable amount of Federal funding, ConRail simply does not work, then some other answer has to be found. It is my understanding that Mr. Jordan, in whom I have great confidence, shares that view. It is in large measure that consideration that encourages me to state the views of the association as I have today.

This is all that I have to say. I might, just in amplification and supplementation of your discussion with Mr. Snyder, I might say that it is my personal judgment that some means must be found to reduce the labor costs component of the ConRail experiment. I don't believe that what Mr. Snyder said was directly in opposition to that. In any case, even if it was, I would not be in accord.

Mr. Jordan and other ConRail witnesses can give you the precise data, but the proportion of labor costs on ConRail is not only higher than its predecessor railroads, but it is much higher than other successful railroads, and it is significantly higher than the national average, which runs about 51 percent of all costs attributable to labor. ConRail's must be in the range of 60 percent. Although, as I said, ConRail can provide that precise data.

So, it is the precise issue that Mr. Cole identified. It is also essential in the long run. I am not privy to the negotiations, and I don't know what is happening in the negotiations, or exactly what their problems are, but in the long run I cannot see the possibility of a very successful railroad, privately owned with profitable operations, with the kind of cost ratios that ConRail is now experiencing.

When you throw a number of properties together, you have a transition period. I can understand that when you have an enormous rehabilitation task, when you must build your maintenance forces, and things of that sort. I am speaking of the long run.

Thank you, Mr. Chairman.

[Mr. Dempsey's prepared statement follows:]

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

My name is William H. Dempsey. I am President of the Association of American Railroads, with headquarters in Washington, D.C. The railroads which are members of the Association operate 92 percent of the line-haul mileage, employ 94 percent of the workers and produce 97 percent of the freight revenues of all railroads in the United States.

I appreciate this opportunity to appear before you to present the views of the Association on H.R. 11492, a bill authorizing additional appropriations to the United States Railway Association (USRA) for the purpose of purchasing securities of Consolidated Rail Corporation (Conrail), and on funding requirements for Conrail.

The railroad industry, along with many other interested parties, supported enactment of the Regional Rail Reorganization Act of 1973 (3–R Act) to deal with the major rail transportation crisis in the Northeast region caused by the bankruptcy of a number of large railroads in that area. Under that Act, USRA was created to plan for the restructuring and reorganization of those railroads into an efficient and economically self-sustaining rail system. The Act also provided for the establishment of Conrail as a private carrier to operate most of the restructured system. USRA was made responsible for formulation of the Final System Plan, supervision of federal financial assistance to Conrail for working capital and rehabilitation, monitoring the use of such funds, and assessing Conrail's progress toward financial viability. Congress approved a $2.1 billion financial assistance package to aid Conrail in rehabilitating its facilities and upgrading transportation services, and for working capital. The railroad industry assisted and cooperated in every way to ensure a smooth transition for Conrail's initial operations, which began on April 1, 1976.

In short, the Nation's railroads have supported the Conrail concept from the outset and that support continues. We are vitally interested in the success of Conrail's operations.

During the two years that have elapsed since its operations were begun, Conrail has made substantial progress toward the 3–R Act's stated goal of restoring adequate and efficient rail service in the Northeast. This is the case despite complexities and adversities that were not, and for the most part conld not have been, foreseen. Unusually severe winter weather during both years has hampered operations and, along with the coal strike, the decline in the steel industry and other conditions, has caused a decline in the projected volumes of freight traffic. Add to this the circumstance that the real facts as to the poor condition of its equipment fleet and, to some extent, its physical plant, were not fully developed at the time Conrail was created.

On February 15, 1978, Conrail submitted to USRA a five-year (1978–1982) Business Plan which indicates that the initial $2.1 billion authorization by Congress will not be sufficient to enable it to rebuild properly and become financally self-snstaining within the time frame established by the Final System Plan. Conrail has conclnded that more time will be needed for realization of its goals than was scheduled under the Final System Plan, and has projected that it will need an additional $1.283 billion in federal funding to accomplish its objectives during the period from 1978 to 1982.

Except for the data contained in its five-year Business Plan, we have no way of measuring the soundness of Conrail's projected need of $1.283 billion in additional financial assistance, nor do we have any way of knowing how much time ought to be allotted to continuation of the Conrail undertaking. Neither do we express any view as to whether appropriation of the additional funds should be authorized all at one time or at several.

We are convinced, however, that additional financing should be provided to Conrail soon and that sufficient time should be allowed to give the Conrail experiment a fair test of success. In 1973, the alternative to public financing of Conrail's operations was some form of nationalization of the railroads in the Northeast. Frankly, that still appears to be the only alternative. The railroad indnstry, and we hope Congress, does not want that unless all else fails.

A word of caution, if I may. Funding for Conrail should not be allowed to interfere with or prejndice the ability of other railroads to obtain and make use of financial assistance under the provisions of Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (4–R Act). That financing was authorized to

I don't mean that in a bad sense, but the fact is that huge numbers of cars were pulled into the Northeast, and were caught there by the dreadful winter that we have had.

We found ourselves in a situation in which ConRail had—I cannot give you the exact percentage—something in the way of 200 percent of their car ownership. We had some Western roads with only 85 percent. We were deeply concerned with ConRail operations.

We are deeply concerned with the issue on locomotives and cars. We have addressed our car service orders to that problem.

Beyond that, we don't, for example, in any organized way keep track of how the various elements of their projections are falling in place, or not falling in place. ConRail briefs us on that, and we keep fully informed. We do not make any independent analysis of that in any organized way.

Mr. ROONEY. Isn't this car shortage typical in other parts of the country as it is in the Northeast?

Mr. DEMPSEY. The car shortage is nationwide. There are more cars here in the East, and they have been caught in the snowdrifts for a long time, and now it is loosening up.

We have several factors which have contributed to our current problem and it is a desperate one because our cars and engines have not been what they should be. Now, in the first place, everyone wants to get their grain to the market, so it is a problem that we face every time we have this sort of demand.

Second, we have the weather in the Midwest and in the Northeast which has just been dreadful. There is no way that you can anticipate that. We sent out our car orders to get those cars back, from the East to the West, where they needed them, as soon as we saw that they needed them. But that does not do any good until you can unload those cars. If those cars are caught in a yard that is blocked by a snowstorm, there is nothing that our car service orders can do. That is a second factor.

Third, we have had a perfectly dreadful financial year. Last year was our worst year since 1932. We had a coal strike that crippled the operations of many of our major carriers. As a consequence, we have right now a high bad order ratio on both locomotives and cars.

Those things are working themselves out. The situation is improving, but it is something that we are deeply troubled by.

Mr. SKUBITZ. May I ask a few last questions?

Mr. ROONEY. The gentleman is recognized.

Mr. SKUBITZ. You spoke of the weather as being the cause for cars not getting from one place to another. That is not the only reason, though, is it?

Mr. DEMPSEY. No.

Mr. SKUBITZ. What are some of the other ones; let's hear them from you.

Mr. DEMPSEY. The weather was considered to have been our principal problem.

Mr. SKUBITZ. That is right now, but weather has not always been the major issue.

Mr. DEMPSEY. When we see that our car service orders are not being complied with, we have inspectors in the field conducting enforcement activities in those places that appear to be problems.

I would say that because of problems in enforcing our car service orders, I recently doubled the fine that we impose. We impose fines for violations of our car service orders.

Mr. SKUBITZ. What does "double" mean?

Mr. DEMPSEY. $200 from $100 per violation.

Mr. SKUBITZ. If they keep the car for 10 or 15 days, that is one violation.

Mr. DEMPSEY. The violation would be to send the car loaded in another direction than it is supposed to go.

If that does not work well, we keep track of the percentage of violations by each railroad. I report that percentage to the Board of Directors every month. If we don't see the percentage of violations going down to something that can be explained by ordinary circumstances, I have the authority to increase the fine up to $500.

Mr. SKUBITZ. That is for sending a car in the wrong direction. What happens when they keep the car for 5, 6, or 7 days.

Mr. DEMPSEY. They pay the per diem.

Mr. SKUBITZ. How much is the per diem?

Mr. DEMPSEY. I believe that it ranges from $1.50 to about $11.

Mr. SKUBITZ. A lot of those companies find it much cheaper to keep things stashed in the car, rather than in their warehouse per day, depending on the value and age of the car.

Mr. DEMPSEY. Unfortunately, we found examples, and this is not typical, happily, but of the sort of thing that you are talking about. One shipper actually loaded a car with a carton of toilet paper in order to keep his hands on that boxcar.

Mr. SKUBITZ. That must have been in the Northeast area, wasn't it?

Mr. DEMPSEY. I am not sure where it was. I really can't say. But, there are practices engaged in by shippers with respect to using cars as warehousing facilities, or keeping their hands on cars when they foresee car shortages.

This is not in the best interest of the shipping public, in general. Some of our railroads have been making suggestions to increase the penalty per diem and to decrease the free time that they have for loading and unloading.

Mr. SKUBITZ. Let's go to the next point. What about ConRail? ConRail has been accused of not returning cars. Is this correct?

Mr. DEMPSEY. Yes.

Mr. SKUBITZ. It is one of the biggest violators?

Mr. DEMPSEY. In our judgment, ConRail's level of compliance with the car service orders was not adequate, and it was one, though not the only one of the railroads, whose performance led us to increase the penalty.

Mr. SKUBITZ. Now you have a computer system called train II. Is that correct?

Mr. DEMPSEY. That is correct.

Mr. SKUBITZ. Does ConRail comply with that?

Mr. DEMPSEY. They are participants.

Mr. SKUBITZ. Do they use the train II system?

Mr. DEMPSEY. They do.

Mr. SKUBITZ. When did they start?

Mr. DEMPSEY. I can't answer that, Mr. Skubitz. The participation is voluntary. It is a computer car identification system only.

Mr. SKUBITZ. They are only feeding part of the information and not all of it.

Mr. DEMPSEY. I would have to check that. But if that is so, I don't think that they would be unique. There is in the railroad industry some question among railroads whether there ought to be some limit in participation, and some do not participate. Some railroads feel that some of the data with respect to the type of lading, for example, ought not to be given distribution.

Mr. SKUBITZ. That is all, Mr. Chairman.

Mr. ROONEY. Thank you very much Mr. Dempsey. The subcommittee is adjourned until 2 o'clock tomorrow afternoon.

[Whereupon, at 4:20 p.m., the subcommittee adjourned, to reconvene at 2 p.m., Wednesday, April 12, 1978.]

CONRAIL AUTHORIZATION—FISCAL YEAR 1979

WEDNESDAY, APRIL 12, 1978

House of Representatives,
Subcommittee on Transportation and Commerce,
Committee on Interstate and Foreign Commerce,
Washington, D.C.

The subcommittee met at 2 p.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Fred B. Rooney, chairman, presiding.

Mr. Rooney. The subcommittee will come to order, please.

We are very fortunate today in having some very prominent people from Pennsylvania here this afternoon. There are a group of postmasters from the Commonwealth of Pennsylvania, many of which I formerly served as their Congressman and some of which I presently serve.

I want to thank them for coming and take this opportunity to welcome you all to this committee.

Our first witness will be the distinguished Secretary of Transportation, a former member of this great Congress and a member of this committee, the Honorable Brock Adams.

Mr. Secretary, you may proceed. You are running on Amtrak's schedule, I might say.

STATEMENT OF HON. BROCK ADAMS, SECRETARY, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY ROBERT E. GALLAMORE, DEPUTY ADMINISTRATOR AND MORTIMER L. DOWNEY III, ASSISTANT SECRETARY

Secretary Adams. We are within 4 minutes of it. We may be a little bit ahead of it, Mr. Chairman.

I am very pleased to be here, Mr. Chairman. I appreciate the courtesy of the committee in allowing me to testify. I would like to request that I might put my statement in in full and then I will summarize, going through it page by page.

Mr. Rooney. Without objection, it is so ordered [see p. 46].

Secretary Adams. My purpose in being here today is to review ConRail's progress to date, and to address the request which has been made by ConRail to the Federal Government for Federal financing.

As the members of this subcommittee know very well, I was one of those who participated in the development and passage of the 3–R and 4–R Acts that created ConRail. Our basic purpose, then, Mr. Chairman, when you were working with us and we were trying to do this, was to determine some way of sustaining a private sector rail freight service in the Northeast, basically in the area from Washington to Boston and going across as far as Chicago.

The reason for this, Mr. Chairman, was that we have about 55 percent of all of our manufacturing plants in that area. About 60 percent of the industrial workers in the United States are employed in this area.

We talk a great deal about new developments and shifts in population, and manufacturing and industry bases in the United States. But when you examine the situation, if this area were allowed to deteriorate by not having adequate freight service, this country would face a major depreciation. That factor we all recognized and that is why we passed the act.

ConRail, as we all know, was created out of the Pennsylvania, the New York Central, and other bankrupt lines in that area.

I first want to say I think it worked incredibly well. It was a piece of legislation that many people doubted could ever been implemented, that all of these various bankruptcies could be combined into one, the assets transferred, the operations continued, a business plan established and movement made in the plant. All of those goals have been achieved. I think that that is a very successful legislative effort. What I am concerned about, and the reason for my testimony today, is that we had hoped that the $2 billion that had originally been placed in as equity money into ConRail, under section 216 of the act, would be sufficient during a 5-year period to turn the nonprofitable operation into a profitable operation.

Even though since April 1, 1976, we have had everything work smoothly from a legal and legislative viewpoint, we have not been able to certify that the 5-year plan, which was started then, will achieve profitability. Congress stated in that statute that if this were not done, then the Secretary of Transportation, the Secretary of the Treasury and the head of the USRA should then be in a position, which was really the equivalent of what private investors do, to take over and give instructions with regard to the financing of the Corporation through an executive committee.

Now, what occurred was last year, in 1977, the net loss for ConRail was $367 million, which was $96 million more than the final system plan, as originally adopted, projected.

We waited, Mr. Chairman, and you will remember we had conversations with this committee, with the chairman and with the staff until February 15. We wanted to see if the operations this year would be turned around, because we had a very severe winter last year, which was perhaps an unusual situation.

At that time, ConRail produced its plan, which we have examined through the Federal Railroad Administration, and that plan indicated that the total business plan for 5 years would be short by $1.3 billion (actually $1.283 billion). That plan, I want to emphasize, is not a simple operating deficit because the plan, as envisioned by Congress, was to redo the roadbed, to buy more motive equipment, to repair the cars as well as to provide working capital during the early stages of this new company.

So, when I talk about that shortage beyond the $2 billion, it is over a 5-year period and it envisions continuing a capital program—in other words, not just abandoning the capital program and allowing the total amount of money that has been invested to slowly slide back into a deteriorating operation.

I think it might also be emphasized this also envisions $1 billion out of the private market, in other words, a profit corporation. ConRail is going to the private financing market—it already has and the Chairman of ConRail will discuss this with you in detail—and obtained a substantial amount of money for equipment beyond what the Government is putting in as an investor.

Now, I am disappointed that we have not reached the goal with the amount of original money that was put in. I think that the final system plan persuaded me, when I sat on this committee, as well as a number of other members of the committee, that this was the way to go.

I think there are good reasons for the plan not being realized. When we voted to authorize the $2.1 billion, there were several assumptions made. We made certain long-term assumptions about the state of the economy in the Northeastern part of the United States, and about the operational efficiency of the corporation that did not exist. Experience, the only direct way of testing assumption has told us some of those assumptions were wrong.

I think those projections were uneasily made and I think they are quite close to the mark but we did not have the increase in total economic activity in the Northeast that we had envisioned in the final system plan.

Remember, this plan was made in 1975, so we are looking back with perfect 20–20 hindsight to 3 years in the past.

The second reason the final system plan has not been met is the degree that we hoped they would.

At the urging of this committee in its oversight function and when I became Secretary of Transportation, in the Administrative Review, we urged ConRail to take into account updated assumptions and create a new 5-year plan.

What you have before you today and will be presented in these hearings are the results of months and months of updating those projections, trying to determine what the economy in the Northeast is going to do, seeing the operational efficiencies that have taken place and making a recommendation on the amount of money needed.

Mr. Rooney. I think one of the things you missed, Mr. Secretary, is that 112 day-old strike that had an adverse effect on the operation of ConRail.

Secretary Adams. I was going to come to that next, Mr. Chairman. No one could predict there was going to be a 112 day coal strike in the area nor two back-to-back very, very bad winters.

I have discussed this matter with other railroad executives in the area and they sustained substantial losses. So, I want it understood that the whole situation, during the past 2 years, has been very, very hard on the transportation industry in the whole Northern area and in a good part of the United States.

So, I believe what we have to do now, rather than second guessing the original plan, is to do what we are doing today, which is to update and to bring to the committee and Congress the best judgment we can gather together on what the next step is for the next 5 years.

35–045—78——4

I want to say that I think the projections are very optimistic. I think this can be done for the $1.3 billion, but I am putting that at the optimistic end of the scale. I don't want you to think that that figure is one that I might well have come up with if I were doing it individually. It is the work of people that have spent a great deal of time on it in ConRail. I think it is critical that we follow these people's judgment because if there is the feeling by management, and everyone else involved, that they really don't have to make this work and they don't have to make it work as a private corporation, that the Congress will automatically come forward and assist them, then it will be a self-fulfilling prophecy—in other words, you will have a worse result.

So the plan is tight. I think others should be tight. It also contemplates they will get the $1 billion of private equipment financing and $500 million in the operational area and increased productivity which means that labor and management must get into this and join together or this plan will not work.

If you look at the chart of all the railroads at the numbers of people, number of cars moved, the days it takes to move cars, you will see clearly and starkly outlined in that chart which railroads have which degrees of productivity. ConRail is in the most serious trouble of any railroad.

Therefore, there either has to be labor-management cooperation or the $1.3 billion will not work.

Mr. ROONEY. I might say, Mr. Secretary, this committee has been very kind to ConRail over the past 2 years, and the members of this committee will not tolerate another $1.3 billion in Federal financing if it doesn't improve.

Secretary ADAMS. I agree with you, Mr. Chairman. I can skip through this part of my statement and say it flatly to you so it is clearly understood what my position is, since you so clearly stated yours, and that is if this does not work at the $1.3 billion they are talking about, then the Federal Government—the executive and legislative branches—has to decide to go with a new and different kind of system there. That is not meant as any kind of a threat. It is a simple statement of fact. I do not want to take the position and neither does the President of the United States—and I discussed this matter with him as recently as yesterday afternoon—of creating a constantly subsidized freight service in that area when we had an original structure that was supposed to become profitmaking.

If there is going to be that kind of a structure, then there is no point in maintaining this facade. This is a for-profit corporation. I know that is a very hard position but I think it is one that should be understood so that there is no confusion in anyone's mind about coming back. No one should think that this will be just a continual "We will see you again in 2 years or 3 years or 4 years," because if you are going to do that, you might just as well change the structure of what you have and have it run by someone else.

So, what we are proposing, Mr. Chairman, is this: that the United States Railway Association purchase an additional $1.2 billion in preferred stock from ConRail under section 216 of the act.

Second, that we make it a multiyear authorization beginning in [illegible]cal year 1979 and that we use the appropriations process, and, of course, that means the oversight process of this committee as well, to control the flow of funds to ConRail. A supplemental request will be transmitted in the fiscal year 1979 appropriations request when our evaluations of the immediate needs of ConRail are completed.

In addition, we will work with USRA and ConRail to verify that the series "A" preferred stock, as ConRail believes, and as I do, too, is the most appropriate investment security for this added Federal assistance. The holders of ConRail series "B" preferred and common stock, now deposited for the benefit of the transferor estates and the special court, may, moreover need to consent to the issuance of additional senior securities, in accordance with their consent right under ConRail's articles of incorporation.

Hearings on the administrative legislative proposal will provide a forum to resolve this issue.

Mr. Chairman, it is my feeling that providing this $1.3 billion, as requested, will give to Ed Jordon and his management team the time and the opportunity to overcome the startup problems, to overcome this last winter and the coal strike, and to continue a very aggressive pursuit of a self-sustaining railway system in the Northeast.

Mr. Chairman, I have not altered my support for a basic Northeast railroad reorganization system recommended in the final system plan. I have indicated to Mr. Jordon, I have indicated publicly, I have indicated to this committee, I support ConRail. I think it is essential. But I think that $3.3 billion in direct Federal investment represents an investment of considerable magnitude. However, the alternatives we faced in the past were not happy ones, and I believe they have grown no more attractive today.

In other words, I do not have any other different alternatives than this committee faced in 1973 through 1976, and that is why I feel we should pursue vigorously what we started then and which is part way along the road.

Mr. Chairman, so that it is not all gloom—because it isn't all gloom—I would like to close with the brighter side of ConRail.

On April 1, 1976, we did complete, as a government, a very massive reorganization and it worked. The bankrupt railroads with 17,000 miles of track in 17 States went together. I had promised the chairman of the full committee and others that it would work, and I think that it has. I think the startup problems were enormous but they got through them and they did make the system go together.

This system works and the system is better. We have arrested the downhill trend. I know that certain of the Representatives clearly feel we haven't gotten it uphill very much, but at least it has stopped the deterioration of the very bad service. The way they did it is by the end of 1977, they had put down over 1,700 miles of new track. They put 9½ million new ties in there. None of this had been done in the past. Fourteen thousand miles of track have been resurfaced and about 26,000 freight cars and more than 1,800 locomotives have been repaired or rebuilt.

In any other country in the world or any other place in the United States that kind of massive program would show massive results but it just gives you some idea of the total size of the problem that we are talking about.

The goals that are before us, I think, are attainable, Mr. Chairman. I am in support of this program. We have spent a great deal of time trying to analyze it. We are prepared to monitor it.

I will try to answer your questions and do whatever else I can to make this successful.

[Secretary Adams' prepared statement follows:]

STATEMENT OF HON. BROCK ADAMS, SECRETARY OF TRANSPORTATION

Mr. Chairman, I welcome this opportunity to appear before you today to review ConRail's progress to date and to address Conrail's request for additional Federal financing.

As the members of this Subcommitte know, I participated extensively in the passage of the railroad legislation which created Conrail—the 3R and 4R Acts. I believed then, as I believe now, that the Conrail concept represents our best chance to restore service-oriented, self-sustaining, private-sector rail freight service in the Northeast.

The continued availability of rail freight service to the Northeast is essential to the nation's economy. The Conrail service area includes 55 percent of the nation's manufacturing plants, which employ 60 percent of all industrial workers. One of the Conrail's predecessors, Penn Central, alone handled more than 20 percent of all freight cars loaded in the United States. Conrail, as was Penn Central, is the nation's leading carrier of automobiles and parts, chemicals, metals and manufactured consumer prodncts.

When I took over as Secretary of Transportation in January of 1977, I had hoped that I would be able to report to you by now that Conrail was fully on the road to profitability, and that the $2 billion of Federal funds previously appropriated for Conrail under Section 216 of the 3R Act would be sufficient to bring this about. Unfortunately, I cannot make that report.

Despite a smooth conveyance of operations from the bankrupt railroads on April 1, 1976, and the significant rehabilitation accomplished to date, Conrail is experiencing difficulties in meeting the goals of the Final System Plan. Traffic levels have been lower than projected without a comparable decline in expenses, and we have experienced two particularly severe winters. These problems, combined with the host of operational difficulties involved in revitalizing the Northeast rail system, have worked to stretch out the schedule for Conrail's achievement of profitability. Conrail's net loss for 1977 was $367 million, which is $96 million more than projected in the Final System Plan.

In its February 15, 1978 five-year Business Plan, Conrail has projected an additional $1.3 billion Federal funding requirement in order to become financially self-sustaining by 1982. This amount is in addition to the $2 billion already appropriated for Conrail under Section 216 of the 3R Act. In addition, Conrail has projected for that period a $1 billion equipment financing requirement which it hopes to satisfy through the private financial sector.

Mr. Chairman, I am disappointed with Conrail's present and prospective variances from the Final System Plan. It was the FSP which persuaded me together with other members of this Subcommittee to vote to authorize $2.1 billion in Federal financing for Conrail. However, I think it is understandable that Conrail has not performed completely as projected in the FSP. That plan rested upon long-term assumptions about the state of the Northeast economy and about the operational efficiency of a corporation that did not then exist. The Final System Plan, developed with some uncertainty as to Conrail's actual configuration, constituted the best judgment in 1975 about Conrail's future performance. Similarly, the funding levels in the 4R Act reflected the best Congressional judgment at the time, taking into account the needs of Conrail and other programs funded through that Act. Unfortunately, subsequent events in the economy and in Conrail's own operations have proven these judgments to be overly optimistic. Adherence to the Final System Plan financial projection now seems to be impossible.

Conrail's newest projections are the result of a corporate-wide planning process that took many months to conclude. The projections are premised on numerous complex assumptions concerning Conrail's revenues, expenses and capital needs from 1978 through 1982.

The Department of Transportation is currently conducting a detailed evaluation of Conrail's Business Plan. Preliminary indications are that Conrail's estimated $1.3 billion additional Federal financing requirement is probably at, or close to, the optimistic end of a range of potential amounts. What I think is more significant, however, is that Conrail's management and the Conrail Board of Directors have committed themselves to making Conrail financially self-sustaining with that amount in Federal financing. Whatever the degree of optimism and ambition contained in the Plan, it is a product of the people who are responsible for running the corporation on a day to day basis and who will ultimately be held responsible for the Plan's success or failure. I support them in their efforts. Rather than second-guess their detailed planning process, I am willing to work with them to ensure that financial self-sufficiency for Conrail is achieved within the increased Federal investment ceiling that they have requested.

Further, Mr. Chairman, while I do accept that Conrail's projections are optimistic, it is my view that if we decided now that they are too optimistic to achieve, we will create a self-fulfilling prophecy. The Conrail Business plan depends for its success on many critical assumptions and on the willing partnership of a number of participants. In addition to asking the Federal Government for $1.3 billion more, the Plan calls for the private sector to contribute almost $1 billion in new equipment financing, for labor to contribute $500 million in increased productivity, and for Conrail's shippers to contribute through freight rate increases over the five-year period.

If we decide now that those other contributions will not be made, and fund Conrail beyond the $1.3 billion which it is requesting, then we will have guaranteed that the ultimate bill to the Federal Government will be higher than Conrail projects.

As you know, Mr. Chairman, Conrail's projections indicate that additional Federal financing will be needed as early as January 1979, if essential operating and capital programs are to be maintained. Although Conrail's need for additional Federal financing is not immediate and does not constitute an emergency, it does, nevertheless, warrant early action by the Executive Branch and the Congress. Timely action by the Government is also important to Conrail's ability to secure the large amounts of private sector equipment financing that it has identified in its Business Plan.

To meet Conrail's need for an additional authorization in FY 1979, I intend to propose legislation in sufficient time to permit committee action by May 15, 1978, which will:

1. Authorize the United States Railway Association to purchase an additional $1.2 billion in preferred stock from Conrail under section 216 of the 3R Act.

2. Make that authorization a multi-year one, beginning in FY 1979, using the appropriations process to control the flow of funds to Conrail. A supplemental request will be transmitted for FY 1979 appropriations when our evaluations of Conrail's immediate needs are completed.

In addition, we will have to work with USRA and Conrail to verify that series A preferred stock is, as Conrail believes, the most appropriate investment security for this added Federal assistance. Assuming it is, the holders of Conrail series B preferred stock and common stock, now deposited for the benefit of the transferor estates with the Special Court, may need to consent to the issuance of additional senior securities, in accordance with their consent right under Conrail's articles of incorporation. Hearings on the Administration's legislative proposal will provide a forum to resolve this issue.

My remarks today and the forthcoming legislative proposal should not be viewed as a blanket endorsement of Conrail's projections which are contained in the Business Plan. I do believe, however, that by providing the $1.3 billion in additional Federal assistance which Conrail has requested, we will give Ed Jordan and his management team the time and the opportunity to overcome the start-up problems of the past and to continue their aggresive pursuit of a self-sustaining railroad system in the Northeast.

Mr. Chairman, I have not altered my support for the basic Northeast railroad reorganizing principles which were recommended in the FSP and adopted into law by passage of the 4R Act in 1976. At the same tme, I do recognize that the total $3.3 billion in direct Federal investment to which I am suggesting we commit represents an expense of considerable magnitude. The alternatives to Conrail which we faced between 1973 and 1976 were not happy ones, however, and they have since grown no more attractive. Nor do they show any promise of reducing the cost to the Federal Government of providing essential rail service in the Northeast. Should subsequent events show without doubt that Conrail's ultimate need for additional funds is much larger than the $1.3 billion so far identified then I will be the first to say that we must reevaluate the premises of the reorganization solution which we adopted in 1976.

Before closing, Mr. Chairman, I would like to look at the brighter side for a moment. A lot of good things have happened since Conrail's startup and we should not ignore them. As you recall, on April 1, 1976, Conrail took over rail operations from six bankrupt railroads on a 17,000 mile network in 17 eastern states. The startup problems involved in such a complex transaction were enormous, but Conrail's management handled the massive conveyance amazingly smoothly and without service interruption. During its first twenty-one months of operation, Conrail has been able to carry out a significant portion of the huge rehabilitation program for its plant and equipment. By the end of 1977, over 1,700 miles of new rail and 9½ million ties have been installed. Fourteen thousand miles of track have been surfaced. Almost 26,000 freight cars and more than 1,800 locomotives have been repaired or rebuilt. These actions have arrested the former downward trend in the physical condition of the plant and equipment, and are commendable accomplishments. We all recognize, however, that they have not resulted by themselves in attainment of the increased operating efficiencies necessary for profitability. That goal lies ahead of us and is, in my opinion, still an essential pursuit.

That concludes my prepared remarks, Mr. Chairman. I will be happy to answer any questions posed by you or the other members of the Committee.

Mr. ROONEY. Thank you much. Mr. Secretary, for that very fine statement.

The Chair is pleased to recognize the distinguished gentleman from West Virginia, the chairman of the full committee, Mr. Staggers.

The CHAIRMAN. Mr. Chairman, thank you very kindly for the opportunity of saying a word to our Secretary of Transportation.

It is a pleasure for me to be here with Secretary Adams and all of you. I know this is a very important subject you have up today. I want to congratulate you, Mr. Secretary, on your presentation. It is very reasonable and very good.

I commend your courage in saying if this doesn't work, some changes should be made. It takes courage to do that because it is going to affect a lot of people. Nevertheless, I think you are completely right.

My congratulations to the President of the United States, Mr. Carter, for his selection of you as his Secretary of Transportation.

The President has selected one of the brightest young, intelligent men of the Congress to join him in the White House as his aide. I don't think he could have made a better selection. I have said many, many times I think you are most capable.

We saw your efforts on the committee all the years you were in Congress. I saw how conscientiously and how diligently you worked on our committee's accomplishments. You are the architect of this rail legislation, and I believe that you will continue your efforts to make it work. I know you will be very diligent.

I want to thank the chairman of the subcommittee and the members for their work on this legislation. It is so important to America. Thank you again.

I want to commend all the subcommittee, and the chairman especially, for the work you are doing in the railroad legislation and the other legislation.

Mr. ROONEY. Thank you, Mr. Chairman.

Mr. Secretary, on page 4 of your statement you state that: "Preliminary indications are that CONRAIL's estimated $1.3 billion additional Federal financing requirement is probably at, or close to, the optimistic end of a range of potential amounts."

I would like to ask you, would you care to describe the full range of possible additional Federal financing requirements for CONRAIL?

Secretary ADAMS. Mr. Chairman, the range went all the way from $1.283 billion to over $4 billion.

There are two variables. One is revenue base. If you take into account a revenue base of $18.5 billion over a 5-year period, a variation range of 10 percent in there, as you can see, is $1.8 billion of money that would be additionally required.

The other is whether or not there will be an achievement of the $500 billion in productive increases. As I say, we can rachet those for you, but those were the two ranges we were dealing with. This was the lowest figure, and we accepted the figure rather than replace it with one of our own.

Mr. ROONEY. You are being very generous with ConRail, as you stated in your testimony. But, on page 6, you indicate that you will authorize the U.S. Railway Association to provide additional financing in the amount of $1.2 billion. I hope you meant $1.3 billion.

Secretary ADAMS. Mr. Chairman, the way it works is that under the existing appropriation, we have $2.026 billion. ConRail's additional request is $1.283 billion. So, if you take $1.2 billion, plus what they already have, it brings us out to the total authorization they have requested, of $3.309 billion.

Mr. ROONEY. You state that the Department is currently conducting a detailed evaluation of ConRail's business plan. Could you indicate for the committee when it is contemplated this review might be completed?

Secretary ADAMS. We should have it by the middle of this summer, Mr. Chairman. We will be most happy to share with you, through your staff people, the information we have as we put it together.

Mr. ROONEY. This is not a duplication of what USRA is doing, is it?

Secretary ADAMS. No. We work very closely with them because I sit on the USRA Board, and when ConRail came in with the February 15 indication that the final system plan would not work, the Secretary of the Treasury, the Chairman of USRA and I were required then to, in effect, coordinate with that board so we do not duplicate.

We are all going in the same direction as the Federal investigators.

Mr. ROONEY. Thank you very much, Mr. Secretary.

The Chair recognizes the gentleman from New Jersey, Mr. Florio.

Mr. FLORIO. Thank you, Mr. Chairman. Thank you very much, Mr. Secretary.

Aren't you really just postponing the inevitable, if we are going to give ConRail the $1.2 billion or $1.3 billion and it does not work—we will have to make some hard decisions, because at the same time, I think we all realize that the projections which have been made in the past have been overly optimistic.

I detect from what you said today that you say you are willing to receive the projections ConRail is making, and yet you feel some of these may be optimistic as well. I am convinced that until there is a turnaround in the Northeast, which I do not see happening, the extent of the plant, the extent of the work force, and all these factors which ConRail is operating under, is almost insuring the fact we are going to have to make some radical changes somewhere down the line.

Wouldn't it be better for us to face up to that fact right now?

Secretary ADAMS. I think they can make it, Mr. Florio. In other words, what we have happening is a massive shift to coal. This is coming about because of the oil prices and the whole attempt to become more self-sufficient as to energy sources. This is a major source of revenue for all of the eastern lines.

Second, their containerized operations and their working with the truck companies is now beginning to really go. That is, to me, one of the key solutions in the Northeast, one of the reasons the operating expenses remain so high is trying to switch the cars in and out of the cities.

The third is that the Northeast, in my opinion, is going to have a renaissance. The whole thrust of a great many of the administration's programs now is to see that the existing facilities that are in place in many of the older cities are renewed and that there is a system of renewal that makes them a profitable and a better place to live.

Mr. FLORIO. This would be resulting in a manufacturing——

Secretary ADAMS. We are talking about types of manufacturing, yes. Mr. Jordan will testify on this. They have changed the oldtime policy. They are no longer pursuing a policy of feeling there is going to be heavy manufacturing. That would be just pursuing a hopeless dream, but they are not moving forward there.

You still have a lot of heavy traffic in there and a great many automobiles and parts move in and out of the area. If we did not have that rail system carrying into the areas there would be massive layoffs in a short period of time.

So, I think it can be done and I think there should be the opportunity for them to do so. If the economy continues to expand, the Northeast will expand with it. What I am saying to you is these are at the optimistic end of the projection scale.

Ms. MIKULSKI. Would the gentleman from New Jersey yield?

Mr. FLORIO. Yes.

Ms. MIKULSKI. Just as a followup, Mr. Secretary, on the issue of economic development in the Northeast corridor. That happens to be a view I share, but I wonder if it is a view that ConRail shares. Has ConRail coordinated, or does it have a systematic approach to meeting on a regular basis, with the other agencies involved in economic development?

In other words, does ConRail sit down with HUD and the Department of Commerce to say "What can we do to economically revitalize the Northeast corridor"? When do they do it? Second, how do they do it? No. 3, how frequently are they doing it?

Secretary ADAMS. The details of the third part you should direct to Mr. Jordan. He is doing the day-to-day operations. They meet with us regularly. They have a very good marketing staff that meets with our people in terms of the markets that are being developed, what is there, what is being carried, and so on.

My relationship with the President and the operating people in ConRail is very good. In other words, we meet at regular intervals to discuss what kind of developments can and should be taking place in that area. Now, the degree to which they have been meeting with HUD or with the Department of Commerce, you should direct again to Mr. Jordon because we have not tracked, as a private corporation, their relationships with those two Departments.

Ms. MIKULSKI. I thank the gentleman from New Jersey for yielding. Unfortunately, I am going to have to leave before Mr. Jordon testifies. Senator Mathias and I have to go to a hearing on the quality of rail service with the Baltimore district. Could I ask the gentleman from New Jersey if, when Mr. Jordon comes up, would he pose that type of question so we could get at it?

Mr. FLORIO. Certainly.

The last point I would make, as much as you appear to be more optimistic than some of us, what would be your projection for the year we can expect to achieve profitability?

Secretary ADAMS. We are conducting an independent examination which we will complete in July. We have looked at their figures as they came in and their turn-around is in 1980 with a $68 million profit and it goes to $142 million in 1981 and $253 million in 1982.

Mr. FLORIO. Lest anyone be mistaken about my feelings, I am convinced ConRail is viable. I do feel, however, we are going to have to scale down the physical plant. I think there is going to have to be a conscientious effort to make this system much leaner in terms, not of personnel, but in terms of actual physical plants, if, in fact, we are going to make it profitable. That is because I do not see the turnaround in traffic and revenues that some do.

I do not see manufacturing coming back to the same extent it once was. What we are talking about is maintaining a plant that existed to service the needs of an area which no longer has the same characteristics it once had.

I am convinced if it is going to be profitable, we are going to have to scale down the entire system and then have it equivalent or commensurate with what the needs are now as opposed to what the needs were a number of years ago. I hope you are correct.

Secretary ADAMS. Mr. Florio, your analysis of it is exactly where we started with this and what you are indicating to me, and what I understand is, that we maybe did not do it well enough. That is what we did when we took the seven and only bought portions of it.

In other words, there was a great shrinking of the total system that was in existence then. You may well be correct that it did not come down to its viable size. That is what our study is trying to determine at this point: Have we made it?

It is obvious that up to this point—I should not say it is obvious because we are still trying to determine the effect of the winter and the coal strike and whether the general revenue base is viable—but, we are trying to determine whether the plant size does fit a viable railroad in that area. We will be giving to you the best analysis we have.

Mr. FLORIO. Perhaps we should defer large scale financing until we have the results of that study?

Secretary ADAMS. I do not think so because what is going in now basically is repair of essential facilities—motive power, freight cars, ties, rails—that are going to have to have to be used in any event. In other words, we have started at the most important things, first, so, I think immediate financing is necessary.

This is why I emphasize this is a capital program and we want the private sector to understand that the Federal Government has a commitment here and that we are meeting and stepping up to the commitment, so they will too.

There is a massive amount of private financing, more than Federal, that is involved in this corporation. So, if everybody feels, well, we are going to throw up our hands and let it go, we are not going to. We have to have that system up there and I think it can be done.

Mr. FLORIO. Thank you very much. Thank you, Mr. Chairman.

Mr. ROONEY. The gentleman from Kansas is recognized, Mr. Skubitz.

Mr. SKUBITZ. I would like to reserve my time until the end and give some of the gentlemen on the other side of the aisle an opportunity to question because it is a more serious problem with them than it is with me.

I would like to say, Mr. Adams, for the benefit of some of the members of this committee, you will recall when we took the rail bill up several years ago that I perhaps had as much opposition in my area of the country as anyone. Kansas was not a bit interested in ConRail; yet, because of the need for a rail program in the Northeast, which I thought was beneficial to us too, I stayed with you in the passage of that particular bill.

I still want to see ConRail succeed. I feel that perhaps we ought to be more honest with the Congress when we talk about this $1.3 billion. I will get to that later on when I get my time to ask questions.

Thank you, Mr. Chairman.

Mr. ROONEY. Thank you.

Mr. Murphy?

Mr. MURPHY. I have no questions. Mr. Chairman. I would like to congratulate the Secretary on the very positive action has has taken in this area. We certainly hope to bring this thing around to a profit-making operation.

Secretary ADAMS. Thank you, Mr. Murphy.

Mr. ROONEY. Mr. Madigan?

Mr. MADIGAN. I have no questions.

Mr. SKUBITZ. Would the gentleman yield?

Mr. MADIGAN. Yes.

Mr. SKUBITZ. If you were so successful doing that over at the Chinese Embassy with one trip to China, may I suggest to the chairman maybe we could arrange a trip for him to some of the Arab countries and maybe he can sell them ConRail.

Mr. ROONEY. Thank you very much. I think, Mr. Secretary, this is a great tribute to you by this committee because there are more members present than I have seen here in some time.

Ms. Mikulski?

Ms. MIKUSKI. Mr. Adams, I would like to come back again to the aspect of ConRail being an economic tool. This is a question more appropriately for Mr. Jordon. One of the ways we can justify with my constituents the continued expenditure for subsidizing a railroad is if our subsidizing of ConRail, in effect, is a factor for developing jobs and other opportunities in the private sector.

One of the concerns that I have—and I read about the yeoman's job that you did of placing rail and so on—is, Does ConRail have a buy-merican philosophy and approach? For example, does it buy American steel for its railroad track and its railroad cars? Again, in addition to coordinating with other agencies, I think if it spends its bucks in America, people would feel better about it. Is this a buy-American philosophy?

Secretary ADAMS. The reason I am consulting with my colleague is to be very certain if there are certain items that we no longer, as a nation, produce in the railroad area that they buy abroad, certain kinds of motive car electrical replacement. But, if you are asking me if there is a law on the Corporation——

Ms. MIKULSKI. I know there is not a law, but I wonder if there is a general policy?

Secretary ADAMS. The answer to that is "Yes."

Ms. MIKULSKI. When I posed this question to Mr. Cole, some weeks ago, he seemed hesitant. He murmured something about the chairman giving us a better deal and everyone was supposed to get back to me. They did not.

Secretary ADAMS. They buy their rail domestically, ConRail does.

Ms. MIKULSKI. Do you think that will be a guaranteed commitment?

Secretary ADAMS. I think it is a commitment. That is their philosophy.

Ms. MIKULSKI. In terms of the quality of service in the Northeast corridor, what is ConRail's orientation toward improving quality of service and management changes. What are we going to get for our $1.3 billion that is going to make it better? The shippers I represent are complaining about, No. 1, management's attitudes. They say that ConRail is not really wanting to strive to increase business. And. No. 2, they complain of a slow turnaround in terms of getting cars and moving cars.

Secretary ADAMS. In my opinion, and I am going to give you my opinion as to what it is, they have to get control of their car fleet. The biggest problem that we have had with all the Northeast railroads is what we called the blocked out territories.

In other words, the Western railroads, the Southern railroads used an automated car control system and what we call a realtime system so they know in realtime where their cars are at all times.

You do not have that kind of a system. That, I think, is essential for really increased productivity in the Northeast.

Ms. MIKULSKI. Are they considering it?

Secretary ADAMS. Yes; whether they are going to use the Southern or Southern Pacific System, I do not know. There are basically two different types of realtime systems being used in the United States. I do not know which one they are considering. I think that is essential. They have to have that.

Ms. MIKULSKI. Thank you, Mr. Adams. I would like to go along with the other members of the committee and thank you for the job you are doing. It is wonderful to talk with a member of the executive branch.

Secretary ADAMS. Thank you.

Ms. MIKULSKI. I have no other questions, Mr. Chairman.

Mr. ROONEY. The gentleman from Kansas is recognized for 5 minutes.

Mr. SKUBITZ. Thank you, Mr. Chairman. Brock, I, too, want to commend you on the outstanding job that you have done over at the Department. I think that the work you did here on the railroad legislation convinced all of us that you had a thorough knowledge of what had to be done if we were to make this systematic. I want to do everything I can to help you in your endeavors to make this thing work.

There are a few things that bother me. I want to say first, at the outset, certainly you know as well as I, coming from the Midwest, the taking over of the bankrupt railroads back in the early days was not a very popular move. I joined you and the rest of the committee in an effort to pass this legislation.

You say in your testimony on page 1, the last paragraph, that ConRail's service area includes 55 percent of the Nation's manufacturing plants which employ 60 percent of all the industrial workers. I agree with that statement. But, Is it correct to say that if you draw a line from Harrisburg to Albany, N.Y., that everything west of that area would be profitable and that this is the area that includes the vast number of industrial plants and also the vast number of industrial workers? This is the profit area, isn't that correct?

Secretary Adams. The areas west of the so-called rewall are supposed to be profitable and I think they probably are. There is an enormous amount of traffic generated. I have not broken down in the statement the number of people that are dependent upon rail service.

I am talking now, Mr. Skubitz, about the shipment of parts and the shipment of automobiles, refrigerators. Your enormous populous areas are in the Northeast and along the seaboard. That heavy movement is still, to a very great degree, by rail.

Now, the reason it does not become profitable——

Mr. Skubitz. I know what the reason is. I am trying to look for a solution to this thing. We have to have that system, but it may have to be cut. The only point I am driving at is if we are to make this thing work, our real problem is east of the line that I speak of.

If we are going to have any saving, we are going to have to cut down some of the rail operations in that area, in these service areas. In a different way, maybe by truck and rail in some way, to cut down on the rail losses. Am I right or not?

Secretary Adams. I think there does have to be a shift in the manner of doing business in those areas. As I indicated before, I think a great deal more consideration has to be used in that area. I think we need a reconstruction of the yards outside of the cities, basic marshalling yards, that are jointly used and a great deal more efficient.

As I indicated in the questioning over here, I think you have to get control over the car fleet so your turnaround time is faster. The answer to that is yes, but if, as has been suggested before, you were to remove those lines west of the Albany-Harrisburg line, from this system, then I can assure you that the Government will then end-up with a nationalized railroad east of that area because I do not know any other way you can maintain the service.

That is because it is going to be a losing proposition until a great change in the method of the total system occurs.

Mr. Skubitz. Mr. Secretary, all I am trying to point out at the moment is that our big problem is in this area east of the Albany-Harrisburg line. I think you will agree this is correct.

Secretary Adams. That is correct.

Mr. SKUBITZ. Now, the second point that I would like to raise is dealing with the $1,300,000,000. I think you have said that is very optimistic. We are very optimistic if we think they can live within the $1.3 billion.

Secretary ADAMS. I think it is optimistic.

Mr. SKUBITZ. So do I. A number of things are going to have to happen that a lot of us feel cannot happen if we are going to stay within that amount. I think it is only fair to tell the House when we go forward with this bill.

Secretary ADAMS. I think the House should be told this is an optimistic and a very tight figure and that real pressure is being put on this corporation to manage its affairs well or it will not make it within that.

You will remember, Mr. Skubitz, when this bill originally came up in the subcommittee, and I know the chairman remembers—we said that the figure should be higher than $2.1 billion, that they were not going to make it.

We could not overcome the potential of a veto, so we settled on it. It was a compromised figure. I tried at that time, and I know the chairman did—because in the last 2 years, the chairman has carried ConRail and the 4–R Act, and so on, while I was off doing economic kinds of things—and we have always tried to state to the House that this was a very close to the line operation, that the Government is really acting as an investor here and just as with most friendly bankers we are pretty hard about how much money we are going to give them. Yes, it is an optimistic figure.

Mr. SKUBITZ. We sit here and we say we are not going above this figure, we will look to something else. I do not know what we can look to. Can you suggest anything we can do except sell off this part and that part to some other railroad or whatever?

I do want to beat ConRail across the back as much as anybody else, but I do not want to see them sitting back there smiling at me saying, "What are you going to do?"

Secretary ADAMS. That is what I indicated to the chairman, Mr. Skubitz, that the three alternatives we faced in 1973—at the time of the potential liquidation, because you will remember we finally passed this bill not when it went into bankruptcy but when we arrived at a point when there was not enough money to meet the payroll—the three alternatives at the time, were the ones we proceeded with; to simply have a firehouse sale, which was suggested by some, just throw it up in the air; and the third was that you nationalize.

Those are the three things that still remain as the alternatives. I have not thought of another one in the meantime that I can give to you.

Mr. SKUBITZ. Now, we tippytoe around about getting more industry in there. I would like to see it happen as one of the solutions to this. But, you remember, Mr. Secretary—may I call you Brock? I feel I am closer to you when I call you Brock than when I say Mr. Secretary.

Secretary ADAMS. I would be most honored if you would.

Mr. SKUBITZ. Brock, as you recall, at that time, we were bothered very much about what was going to happen to labor. This bothered me as much as anybody else because laying off all these men would create quite a problem. So, in order to take care of this matter, we went so far as to recognize then that probably there were too many fellows working in the rail industry in this area, that cuts would have to be made.

We softened the blow at that time by placing a provision in the act that any man who lost his job was not only going to be carried and paid his salary, but if there were any increases in wages that were given to those that were still working, they were going to give them the same benefits. Isn't this correct?

Secretary ADAMS. Yes. The best recollection I have is between 7,000 and 8,000 people went out of the system. This is what I indicated to Mr. Florio in answer to his question. We, at that time, reduced the total size of the system. There was a set of labor protection provisions placed in it for the very reason that you mentioned, and they have been used.

We have had, within the system, an absorption of people as they have been laid off of one road or another. There has been a net reduction by attrition and by the use of the labor protection provisions. Whether it has reached the proper level is why we are here today, to see whether they are going to make it.

Mr. SKUBITZ. That is why I raised the question, Brock. ConRail labor costs take 56.8 percent of its revenue; the Norfolk-Western, 42.7 percent; the Southern, 40.5 percent. Now, we made provisions to take care of the workers, and I do not want to see them laid off.

But, if ConRail's labor cost is 56.8 percent of their total revenue today, is it fair for us to sit up here and beat ConRail over the back about their losses or their expenditures when we, ourselves, have not done anything about beating them over the back about getting rid of some of these high labor costs?

Secretary ADAMS. We have, in this plan, envisioned they have to pick up $500,000,000 worth of reduced labor cost in order to make the total plan work.

Mr. SKUBITZ. They are recognizing there has to be a reduction here the act itself. At the time that you were here and I was here trying to push this bill, we tried to take care of labor at that time by placing this provision in the law, if you lose your job, you are still going to get paid for it and if there were any increases paid to the fellows still on the job, you are going to get the benefit of that.

Secretary ADAMS. We have asked them this and ConRail has agreed that we extend those provisions so that the process can continue to arrive at an optimum plant size. That is what I answered to the chairman earlier. Yes, ConRail has the highest percentage cost in the industry.

Mr. SKUBITZ. If ConRail could reduce its labor costs—and labor is not going to lose a dime by the reduction—who will pick up the cost? We made provision so the Government would pick it up, did we not, in that bill.

So, here, we criticize ConRail for not reducing its labor force and yet, we made a provision to take care of the labor force, and if it were taken care of, there would not be a $367,000,000 loss today, is this correct?

Secretary ADAMS. There would be a loss.

Mr. SKUBITZ. But it would be reduced.

Secretary ADAMS. If you can reduce your total size of the plant, particularly that is not optimal and necessary, you can reduce your total cost. I am not certain, given what you just described, which is true, that even west of the Albany-Harrisburg area, you can get your percentage of labor down as low as certain railroads that have basically a long-haul operation and very little switching.

You see, the problem with the terminal railroad, as you and I know, is that your labor costs become very high. You are handling those cars again and again, and over relatively short distances.

If you base your revenues on ton miles carried, a terminal railroad will always come out with higher costs and lower revenues.

Mr. SKUBITZ. Getting to another area, Brock, yesterday, the witnesses for USRA indicated that evaluation cases could go on for a number of years and they indicated that as long as that matter was in doubt, it would have an inhibiting affect on ConRail's business decisions.

For example, ConRail is less free to sell parts of its system. It would be better if they had a clear title, do you agree with that or not?

Secretary ADAMS. Mr. Skubitz, we have formed, under the instructions of the judge in that valuation case, a negotiating team for the Government and are attempting to negotiate a settlement of the evaluation cases for the appropriate transfer. That negotiation, with a negotiator, is in process now. Yes, that case could be settled. However, I do not think there is any question about the title that ConRail has to its property, because the Supreme Court decision affirmed the transfer and affirmed the ownership in ConRail.

What is being argued, however, and which may have a depressant affect on the management—I am not certain whether it does or does not—is the evaluation of the stock and the certificate of value which was given to the bankrupt estates for the physical assets. But, I do not know of any problem that ConRail has with its title to the physical assets.

Mr. SKUBITZ. I am glad to here you say, if I understand you correctly, Brock, that you are trying to reach some agreement at this time to get this out of the road so ConRail can move forward.

Secretary ADAMS. We are trying to see if we can negotiate a settlement because the alternative—you must evaluate all those pieces of property to determine what the value of the certificate of value standing behind the stock is.

But, that does not injure ConRail in its title to the properties, properties that are within its control. But, that litigation is one that would take a great amount of time because you have to send somebody out to appraise the whole thing.

Mr. SKUBITZ. That is all the questions I have at this point, Mr. Chairman.

Mr. ROONEY. Thank you, Mr. Secretary. We thank you for your appearance today and your cooperation.

Secretary ADAMS. Thank you, Mr. Chairman. I appreciate yours and the committee's work.

Mr. ROONEY. Our next witness is chairman and chief executive officer, Edward G. Jordan, Consolidated Rail Corporation. I would appreciate it very much, Mr. Jordan, if you would introduce your colleagues for the record.

STATEMENT OF EDWARD G. JORDAN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, CONSOLIDATED RAIL CORP., ACCOMPANIED BY RICHARD D. SPENCE, PRESIDENT AND CHIEF OPERATING OFFICER FOR THE BOARD OF DIRECTORS, OSCAR A. LUNDIN, JAMES J. McTERNAN, JR., L. CHESTER MAY, JOHN R. MEYER, RALPH W. NICHOLSON, JOHN C. PIRIE, AND ARNOLD R. WEBER, MEMBERS OF THE BOARD OF DIRECTORS

Mr. JORDAN. Thank you, Mr. Chairman. Let me start on my left. Mr. Ralph Nicholson, former senior Assistant Postmaster General, finance; then Mr. Oscar Lundin, former vice chairman of the board of directors, General Motors Corp.; Mr. L. Chester May, chairman and chief executive officer, Chicago Bank of Commerce.

On my immediate right is Richard Spence, president and chief operating officer for the board of directors; then Mr. John R. Meyer, who is a professor at Harvard University. On his right is Mr. John Pirie, who is now associated with the law firm of Hartman and Crain.

Next is Mr. James McTernan, a former vice president of Comsat.

Mr. ROONEY. Thank you.

Mr. JORDAN. Thank you, Mr. Chairman. With your permission, I would like to submit my formal statement for the record and summarize if I may.

Mr. ROONEY. You may. Your statement will be included in the record at this point.

Mr. JORDAN. Thank you. As you well can understand, from our viewpoint it is clearly a privilege to be before you today. As you have already indicated, this committee has been kind to ConRail in its formation and during the first 2 years of its existence.

Moreover, I consider it a privilege to report to you now on our progress in carrying out your mandate to restore rail service in the critical Northeast region of the United States.

I would like to take a moment in commencing to dwell on just where we are. I think it is quite often true, in the presence of getting on with things, that we tend to take snapshots and use these to tell us what is really happening. But rather, as you well know, and as the Secretary also indicated, this is a moment in time and a moving picture, if I may continue with the analogy.

Not much over 4 years ago there were not too many people that did not believe——

Mr. ROONEY. Mr. Jordan, there is a call of the House. We want to hear your remarks from the beginning, but I think we will have to take a 15-minute recess.

[Brief recess.]

Mr. ROONEY. The committee will come to order.

Mr. JORDAN. With your indulgence, I will go back to the beginning so I do not lose my place. I would, as I indicated before the recess, like to take just a moment to reflect on where we are.

As I think, often in the presence of the moment, "getting on with it" as they say, we forget what really has been transpiring and the fact that a snapshot is not a fair representation, to use the analogy of the moving picture.

You know better than anyone, over 4 years ago the bankruptcies were characterized as hopeless, and the probability of restoring rail service adequately to the Nation's needs were really very slight. But even more significantly, the possibility of doing it and insuring the maintenance of the private sector economy system for our Nation's railroads were at best remote.

We are here today to state that most of all of the achievements of these last 4 years, and in our view, most particularly the operational results of the last 2, are substantial evidence of the validity of the projects that Congress put in place commencing with the Regional Rail Reorganization Act of 1973.

We are also here, as the Secretary said, to describe what we have learned in the process in terms of problems and, moreover, in terms of the requirements which we have identified. I think we have also been objective in our evaluation and are not hopelessly optimistic in our plans.

In the simplest of terms, I would say the questions before us are these: Does ConRail, as a private corporation, still remain the best available means to continue the progress made to date in solving the railroad crisis of the Northeast? Is the amount of money that we have identified a rational basis for the Government's advancing investment in ConRail? And, finally, what prospects can we offer for the future that will justify this further expenditure?

In no real sense have the events of the last 2 years provided the kind of absolute assurance or guarantee that you would like to have; that either the amounts of money that have been appropriated or the results that have been projected can be obtained.

Yet, I would say that the physical rehabilitation achieved by the corporation in 2 years, and furthermore, the financial results which were produced, are all well within the projections of the financial system plan. I submit that the last two unusually severe winters, coal strikes, and equipment which was not adequate to our needs, were not foreseen or could they have been. Yet, they have had an obvious impact on our effort.

Moreover, our plan, we think, concentrates on the dimensions of the opportunities, which are, moreover, significant to its results as we have set them forth. It describes the means to get there. For example, we have focused on the question of revenues and the question of whether or not a rehabilitated plant can replace the level of service that is generated by the level of service within the capital area and from labor so that our costs will be reduced to the point where there will no longer be a dependency on Federal funds.

It outlines a number of critical assumptions that are not within our independent control which could, as they have in the past, conceivably upset that forecast. Still, it is a plan and an amount of dollars that is founded on a principle which the Secretary also enumerated.

It is essential to demand performance, particularly from the corporation's management, in reaching the goals that have been set out. Certainly it is ambitious. But, we would not have it any other way.

Furthermore, it recognizes the need—no; I think I would say the continuing responsibility—of all those who have participated in this process over the years: the remainder of the rail industry, the railroad supply community, the communities themselves, labor and the regulators. All of these have a share in the problem; they should share in the solutions, and they must take on the responsibility of doing so.

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This program, as we have set it forth, we think, presents the opportunity for solving the problems in that manner rather than the more comfortable route of simply asking for more money.

Finally, Mr. Chairman, we believe that what has been done to date in this plan supports the view that ConRail continues to offer the most reasonable assurances for achieving the goals set out: adequate rail service, at less cost than any other alternates which have been previously examined.

Moreover, it also provides, in the form of providing for capital investment rather than simply underwriting losses, the preservation and increase in the value of the assets which are essentially being purchased with these dollars. I should add the basis of this conclusion is not only a reexamination of those alternatives but also the fact, as I said at the beginning, that where we are today is much higher on the curve of success than many others believed could happen by this time. Most importantly, I think we should focus on the problems, not argue over the means of solution.

Mr. Chairmman, with your indulgence, I think one or more of the board members might have a comment to share with you if that would be proper. Oscar, would you like to comment?

Mr. LUNDIN. Mr. Chairman, as a nonemployee-director, I would like to commend the Congress for establishing ConRail. It seems to me, after 2 years of experience with this company, there has been established a very important national resource. As has been discussed already, there has been a vast improvement in the physical plant that is available now to move goods and services.

A management and organizational structure is in place. There is a trained work force and there is a 5-year plan on which the company proposes to proceed. It would seem to me to be a shame to not provide an opportunity to go forward on this basis and to build on what has already been started.

On a further point, I would like to state, from my personal viewpoint, the business is being run as a private sector enterprise with national interest overtones. In my view, the directors are conscientious individuals. They are motivated, for example, by the public service aspect of the job to be done.

They are objective in their discussions; they are objective in their decisionmaking. I think they have been helpful in coming to decisions in helping to plan the forward progress of the company.

So, in summary, I would like to say I think a great deal of progress that has been made in achieving the objectives established by the Congress for ConRail. Obviously, more needs to be done. The plans are in place to do it. I think it is a bit too early to judge eventual results, but I certainly believe that the company is on the right track and has good plans for the future.

Mr. JORDAN. Mr. Chairman, we are available for your questions.

[Mr. Jordan's prepared statement follows:]

STATEMENT OF EDWARD G. JORDAN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, CONSOLIDATED RAIL CORPORATION

Mr. Chairman and members of the committee, it is a privilege to appear before you to review the progress made in restoring adequate and efficient rail service to the Northeast and Midwest regions of our nation, to describe the extent of the problem which still lies ahead, and to identify the resources required in continuing the effort to achieve the objectives which Congress has set. First, however, I would like to introduce Members of the Conrail Board of Directors who, at your invitation, are here today to participate in this hearing.

Mr. Chairman, the task of traveling from the past hopelessness of the bankrupt railroads to the future achievement of an adequate and efficient rail system is a substantial journey, a journey which got underway with the passage of The Regional Rail Reorganization Act of 1973. Even beginning that journey was an achievement, for there were many who thought the only alternatives were either to nationalize the wreckage of the bankrupt railroads—at enormous cost to the taxpayer—or to allow their liquidation at too great a cost to the economy to even contemplate. The action taken to date, I would submit, has demonstrated the prudence of the course taken by Congress. The 3R Act of 1973 and the 4R Act of 1976 were the foundation of the greatest corporate reorganization in history, which included:

"A reorganization plan completed on a timetable so demanding it avoided the taxpayer being saddled with a liability of more than 1 billion dollars in alleged claims for the unconstitutional erosion of the assets of the bankrupt estates.

"A reorganization that was implemented through the unique conveyance process, in a manner that allowed the start-up of Conrail with a smooth continuation of rail service.

"And now an operation which, in a little more than two years, has accomplished a great deal; but also a recognition that there is still much to be done.

"Finally, and perhaps most importantly, much has been learned from this experience about the course ahead, about the pitfalls it may contain, and about how the work yet to be done can best be undertaken."

In order for us to address the issues before us now, I would first like to review what has been accomplished to date.

Through the end of 1977 Conrail's ambitious rehabilitation programs were beginning to take hold and to check the downward spiral in the quality of service. For example, new welded rail had been laid on a total of 1,745 miles of track and 9.5 million new crossties installed. In addition, heavy repairs were completed on more than 25,000 cars, and heavy repairs or overhauls on 1,845 locomotives.

Even though Conrail's financial loss for 1977 was larger than expected, cumulative financial losses for the first 21 months of operations—April 1, 1976 through December 31, 1977, were approximately the same as the loss projected in USRA's Final System Plan. In addition, the drawdown of federal funds scheduled for this period was within the limitations set forth in the Financing Agreement.

However, in spite of these and other considerable achievements, and based on the experience gained during this initial period of operation, Conrail has concluded that it would not be able to attain all its major objectives within the funding and time framework originally established.

There are a number of reasons for this situation: In the vital area of revenue, outside events have had a substantial adverse effect; the condition of the inherited revenue equipment and locomotive fleet was far worse than the Final System Plan anticipated; and, in some operational areas, the pace of change and improvement envisioned in the Final System Plan proved to be too optimistic. Moreover, we can now identify a number of problems which, for the most part, must be solved by institutions in cooperation with Conrail, and which critically affect Conrail's ability to succeed. Nonetheless, Conrail believes that the goals of the Act which created it continue to be of overwhelming importance to the economy as a whole as well as to the people of the Northeast region. Thus, with this perspective, Conrail believes that the course of events to date and the achievements already realized indicate that Conrail continues to be the best vehicle for continuing to attack the problem and for achieving the greatest measure of success.

We report this to you at this time, not because Conrail faces an immediate financial crisis of depleted funds, but because we can foresee that Conrail's future financial performance will not be in accord with the Final System Plan projections. In considering the significance of this judgment, it is important to realize that there is a substantial basis for seeing Conrail's task as far more difficult than had been contemplated at its creation. We also believe Conrail is on a course which will bring solutions to those problems over which it has control. And lastly, we wish to stress that much of our effort is accruing real and lasting value to the federal government in return for its investment through the rehabilitation of the track and equipment which makes up the rail system itself.

In thus reporting to you, Conrail deliberately chooses to assess its problems as realistically as possible. We treasure what we believe is this Committee's trust that Conrail has told it, and will continue to tell it "as it is." Our dedication to achieving the task set out for Conrail will not cause us to confuse objective appraisals with enthusiastic, but unrealistic, promises.

On the basis of our objective appraisal, Conrail believes that the potential still exists for a private sector solution which not only provides adequate and efficient rail service in the Northeast, but also preserves the inherent efficiencies of the market-economy system for the entire rail industry.

Conrail's most recent Five Year Business Plan has been submitted to USRA in accordance with the Financing Agreement, and copies of the summary and introduction of the Plan have been provided to the Committee for your information and review. The Plan describes specific details of the proposed programs and plans to be undertaken in the period ahead, and lays out the necessary economic assumptions on which they are based.

There are a number of key issues on which Conrail must continue to especially concentrate its energies and resources if the Northeast rail system is to be revitalized. These include:

(a) The need to improve the traffic base and to increase revenues;

(b) The need to improve the productivity of its major cost—personnel; and

(c) The need to improve the regulatory response to the Conrail situation.

It is also important to understand the full economic impact of the several assumptions contained in the plan, such as the anticipated rates of inflation, wage levels, and possible changes in the law or in regulation. We believe the assumptions in these areas are reasonable.

Progress toward resolving these issues and to avoiding critical changes in these assumptions obviously is dependent in part on factors beyond Conrail's control. But Conrail has a positive program underway in each area where it can have an impact. For example, in regard to revenues, let me cite several factors: coal tonnages have not grown as projected earlier, due to the fact that demand has not increased as much as expected following the oil embargo. In addition, revenues generally have suffered from the continuing decline in strength of the Northeast economy relative to the rest of the nation. And finally, some revenues have been lost because of Conrail's service problems.

To meet this situation Conrail is undertaking a number of specific revenue producing strategies and programs. As we move ahead in their implementation we are making sure the programs are keyed to Conrail's basic mission of providing rail services shippers really need, at competitive rates which will cover costs and earn the rate of return necessary to achieve economic viability. Therefore, the priority is to look hard at investments in those facilities that provide the kinds of service improvements that will attract shippers, including those who have abandoned the rail mode, and which will add new business.

To better target revenue opportunities, a study of market strategy is being completed that identifies major commodity "lines of business" to determine the optimum levels of service, pricing, and investment for each.

We have also undertaken a comprehensive program to improve car utilization, which will both improve the reliability of service, and cut costs.

To meet equipment needs Conrail's Five Year Plan calls for expenditure of $3.47 billion to maintain, repair and overhaul freight cars and locomotives. Included in these programs are the heavy repair of almost 55,000 freight cars and about 3,600 locomotives. We plan to acquire 11,516 revenue cars at a value of $496 million, and more than 11,000 TOFC trailers at a cost of $114 million. In addition, $498 million will be expended to acquire 600 locomotives, 85 cabooses, and other pieces of non-revenue equipment. And we will continue the ambitious track renewal program which, over the next five years, calls for the laying of welded rail on 5,226 additional miles of track, and the installation of 23 million new ties.

The improved operations which are permitted as the rehabilitation program takes effect are critical to the important goals of increased efficiency and improved service. This improved service, in turn, we believe, will attract new business and help lead to the increase in revenues Conrail needs if it is to reach its ultimate objective of economic viability.

The cumulative result of the five year rehabilitation program ahead, following on that already completed will produce great steps in the program of improving track and equipment. This will result in a reduction in the out-of-service ratios for the locomotive fleet from the current 18 percent to an average for 1982 of 10.3

percent, and for freight cars from 13.3 to 7.3 percent. In addition, by the end of 1982, slow orders will have been reduced from nearly 8,000 miles on April 1, 1976, to less than 1,800.

Very clearly then, the crippling effect of the physical deferred maintenance problem that existed for the bankrupt rail systems, and which Conrail inherited upon conveyance of the properties, will have been largely overcome—but at a cost considerably in excess of what had earlier been projected.

Other Conrail programs are designed to bring costs under better control and improve productivity. For example, Conrail must develop better ways to manage the use of its capital and labor resources, including the creation of better quality jobs. At the present time Conrail is negotiating with its labor brotherhoods seeking major changes in work rules. Other opportunities for labor savings will take place with the continued consolidation of bargaining contracts as mandated in the 3R Act.

As Conrail now assesses the five years ahead, it has estimated a need for additional federal financing of $1.283 billion for the 1978–82 period. In addition, $959 million will be sought in the private sector for the acquisition of new rolling stock.

This financing requirement, however, should be seen in proper context: without considering equipment acquisitions, the Five Year Plan calls for total expenditures of $9.5 billion in maintaining and rehabilitating the physical assets of Conrail. Thus, the federal share of Conrail's financing needs, while not inconsiderable, is still only a fraction of the total sum which Conrail will spend in maintaining and rehabilitating its physical rail plant in the Northeast in the next five years.

In the most basic sense, however, the question of whether an additional $1.3 billion, or whether more or even less is the appropriate amount, for the federal government to invest in Conrail is not the prime question before you today. The prime question, we believe, is whether this additional investment is the best way available now to achieve the greatest possible progress toward the goal of providing adequate and efficient rail transporation at the least possible cost to the taxpayer.

Conrail believes that the answer to the question is "yes."

But as hopeful as we are that Conrail can achieve the objectives which have been set for it, and as committed as we are to the challenges spelled out in the Five Year Business Plan, we cannot guarantee success. And as a result, it might well be that you will be asked to pause again to consider alternatives such as nationalization, controlled transfer and even liquidation. In any examination, let us be certain that each alternative is challenged as to whether it solves the problem not otherwise solved, rather than merely substituting different methods for providing federal funds. The alternatives of which we are aware have been studied and considered before, and were found to be wanting both in regard to their high cost, and/or in the levels of service to be supplied. I believe this continues to be the case.

Let me say that Conrail is more than willing to assist in exploring other options as they are put forth; in fact we are eager, as we must be diligent in pursuing the goal of least cost. But I would suggest that now is not the time to interrupt or jeopardize the substantial progress that is now being made.

The task assigned Conrail continually grows more complex. For example, last week, the ICC promulgated a formula for fixing per diem charges at a level two years hence which will cost Conrail, on an annual basis, approximately $50 million more than previously anticipated. The ICC's objective is to encourage the rail industry to invest in more, new, revenue equipment in order to bring about the creation of improved car supply and utilization of the car fleet. Its major impact will be to increase per diem payments from railroad to railroad within the industry. Conrail, because of the historic inbalance in traffic flows, has a lot of non-owned equipment on the system at most times. Thus, the result of that Commission action will be an additional expense it can ill-afford. Obviously the impact on rail service in the Northeast is the same, whether or not Conrail is the rail operating entity. But the fact remains that when the ICC considers of long-term benefit to the nation will be disruptive to the more immediate task before Conrail.

Or consider the continuing impact of inflation. On a purely arithmetic basis, by the end of 1977, Conrail had decreased the physical amount of deferred track maintenance which it inherited from the bankrupt carriers, by $195 million. But in the same two years, inflation has caused the present dollar value of the deferred amount not yet performed to remain at the same dollar amount despite the accelerated work being done. Obviously the conclusion is a sort of never-catch-up situation for which immense spending in itself is not the complete nor prudent solution path. The key to gaining control must be management of the problem through future route rationalization and improvements in labor productivity.

Critical developments such as these not only underscore the complexity of the problem, but illustrate that massive, simplistic solutions are not available. Moreover, they indicate that each of the interests which comprise the rail transportation resource of the nation are also very real parts of the problem. Everyone involved, shippers, labor, the rail industry, regulatory agencies, and the people in the communities themselves must recognize the interdependence of their actions, the conflicts of their goals, and the contribution that will be required in realistic solutions in the public interest. Conrail's programs for the future will strive to address each of the problems, while challenging all those to participate in the process required to meet the common objective.

With all of that, Conrail believes the course which it is embarked upon is the right one for achieving maximum progress toward providing adequate and efficient rail transportation at the lowest cost to the taxpayer. In that light, Conrail recommends the Congress favorably consider additional investment in Conrail as described in the summary of the Five Year Business Plan.

We will be pleased to answer any questions you may have.

Mr. ROONEY. Thank you. As I told you prior to this hearing, I do have some questions that I received from Congressman Giaimo. They will now become part of the record, and the record will remain open until you have an opportunity to respond to the questions.

I might say he did ask me to ask the first question. Does ConRail plan to move any of its regional headqurarters to different cities? Specifically, does ConRail now plan to transfer its Northeast regional headquarters from New Haven, Conn.? If not, is the matter under consideration?

Mr. JORDAN. Most of the conversation about moving the headquarters is taking place outside the company ratther thtan inside. We do have under continuing review the question of where it is appropriate to locate our facilities. For example, we have moved functions from Detroit to Buffalo and to other locations.

But, I can assure the Congressman and will state for the record, at the moment, we will not be moving from New Haven, Conn.

[The following material was received for the record:]

QUESTIONS OF HON. ROBERT N. GIAIMO AND CONRAIL'S RESPONSE THERETO

1. Does Conrail plan to move any of its regional headquarters to different cities? Specifically, does Conrail now plan to transfer its Northeast Regional Headquarters from New Haven, Connecticut? If not, is the matter under review?

Conrail has no plans to move its regional headquarters from New Haven, Connecticut and the matter is not under review.

2. The General Office Building staff in New Haven has been experiencing continuing layoffs for the past year and a half. After the present set of layoffs, they will be down to 94 people. At the same time, many of these jobs are being transferred 60 miles away to Springfiled, Massachusetts, where, I am told, Conrail has to hire people off the streets and must rent office space for these operations, while at the same time space is available and not being used in New Haven.

What is the status of the jobs of the remaining 94 people at the General Office Building? Are we to expect further transfers or layoffs? If so, what is your justification for moving jobs from a city in which you have qualified workers and suitable office space to a city where you must train new workers and rent space?

First, it should be made clear that only six of the jobs transferred from New Haven have been moved to Springfield. All of those people did transfer and no new people were added to the Springfield office.

Presently our records show that as of May 1, 1978 at New Haven there will be 28 agreement positions in the payroll department; 42 agreement positions in the passenger accounting department; 3 agreement clerical in transportation, freight sales and freight sales departments and 22 agreement positions in the systems department.

Conrail is in the process of installing a new payroll system that will alter considerably the allocation of its work force. It is being implemented throughout the Conrail system and will affect several locations, including New Haven. As a result of the implementation of this system we expect that between this time and the end of 1979, 24 positions in the payroll department will be abolished. Because a significant portion of the payroll function, now being performed by the Finance Department, will be assumed by the Operations Department at the Division Headquarters level, 8 of those positions will be transferred to Springfield. Because jobs at Springfield will involve the use of new entry procedures into the computer (under existing labor agreements), they must be posted as new positions in the seniority district for Springfield. As a result, transfers will not be offered.

As of May 1, 1978 there are 22 agreement positions being held in New Haven in the Conrail Systems Department. Since these positions perform a support function for the payroll function, they will also be abolished as the new payroll system is implemented by the end of 1979.

It is anticipated that during the same period these reductions will occur a continuing reorganization of the Conrail system will result in the decentralization of other functions. While the reductions-in-force noted above will occur, it is likely that as a result of the continuing reorganization, other positions will be relocated. New Haven, with space and an experienced work force is a certain location for some of these positions. Therefore, the net employment impact on New Haven will be considerably less than is presently indicated.

3. I have been told that it takes at least 10 weeks to process a Title V claim. It is unconscionable to make people wait so long without money. The claim must go first to Conrail, then to the Railroad Retirement Board, then back to Conrail before the worker can receive any compensation. Do you have enough people working on these claims? Would more people reduce the delay? Why can't existing personnel or additional people be used by the Regional Offices (instead of being laid off) to handle these claims?

Normally, when a claim is received by the Title V Supervisor, it is held for a month until that month's earnings are received from the Payroll Department. Additionally, the labor organizations and Conrail agreed that in processing claims the so-called "one for one" principle should be applied. This principle requires, at a minimum, that processing be held in abeyance for at least a month after the close of the claim month. Once the earnings are received it usually takes one week to process a claim. However, if an individual is a non-earner for an entire month, his claim is processed immediately upon receipt.

Title V claims are only paid on a monthly basis while regular wages are received every week so no employee is without wages for a month at a time. I would also like to point out that when an employee files his first Title V claim, it may take six to ten weeks to complete processing of this initial claim; however, if he files claims regularly, and most of the 15,000 claimants do, he receives his allowance on a monthly basis.

Title V claims do not go to the Retirement Board, they go directly to the appropriate Title V office. However, the procedures of the Railroad Retirement Board require that Conrail offset and return unemployment insurance received against Title V monies claimed.

Insofar as sufficient help working on claims, our Title V office at New Haven received a total number of claims for the months of February and March of 1978 of 1,284 and handled 1,049. The 1,284 claims for these two months exceeds the average of 500 claims per month due to the fact that the month of February, is a short earnings month, historically generates more claims than any other month. We feel there is sufficient help in our New Haven office to handle the work load.

4. How many jobs in total have been moved from New Haven to Springfield since Conrail began operating? Were any of the people laid off in New Haven given the opportunity to follow their jobs to Springfield? How many were transferred? What was the justification for moving these jobs 60 miles away to a city without trained personnel?

Conrail has relocated six positions in Springfield, Mass., that prior to April 1, 1976, were part of the New Haven office. All of the people who were transferred to Springfield were given the opportunity to move to that location. Six individuals did transfer. The six positions that were transferred included:

Assistant superintendent, assistant chief dispatcher, three (3) train dispatchers, and one (1) clerk.

All of these positions are associated with the work done at the Division Headquarters located at Springfield, Mass. The New England Division headquarters has been located at Springfield, Mass., since June 1, 1975.

This change resulted primarily from the fact that on December 30, 1974, a major operating change occurred on what is now the Northeast Corridor. To improve freight service and lessen interference with passenger operations, all overhead or through freight was removed from the New York-Boston "Shore Line." For the most part, that freight traffic was rerouted via Albany, N.Y., and then over Springfield, Mass., to Boston, Mass. From a freight perspective, Springfield, Mass., became the logical place to consolidate operations control of the New England Division. During the time between December 30, 1974 and April 1, 1976, Penn Central did retain operational control of the "Shore Line", that is; it was responsible for the maintenance of right-of-way equipment, dispatching of trains, etc.

In the Railroad Revitalization and Regulatory Reform Act of 1976, Congress mandated the transfer of the ownership and operation of the Northeast Corridor to Amtrak. This had an obvious impact on Conrail when it is compared to its bankrupt predecessors which owned and operated the Corridor. The attached map shows the trackage operated by the Penn Central that now is under the control of Amtrak. From a direct operating control perspective, New Haven is no longer at the center of major Conrail operations, while Springfield, Mass. is located on a Conrail freight mainline. A freight density map, also attached, demonstrates more graphically the fact Springfield, Mass. is the center of Conrail operations in the New England Division.

Amtrak now owns, maintains, and controls the operation of the rail line between New York and Boston, known as the "Shore Line."' It also owns, maintains and controls operations over the line between New Haven and Hartford. A large number of former Penn Central employees were transferred to Amtrak as part of this change. All of the maintenance-of-way employees and engineering department positions associated with these lines were transferred. Since Amtrak controls operations on the Corridor, it dispatches both passenger and freight trains that do operate over the Corridor. Conrail continues to provide local freight service along the Amtrak-owned lines since it has trackage rights for this purpose.

Amtrak also assumed ownership of the New Haven engine house and motor storage facilities.

All of these changes have required that changes be made in Conrail's organization. It no longer is as large an operation. It no longer employs nearly as many people. The changes required Conrail to consolidate its operations. The support force had to be reduced. While it is likely that Amtrak has also made transfers based on operational considerations, Conrail does not have any specific information as to their actions.

In short, six positions were transferred from New Haven to Springfield for the purpose of improving organizational efficiency.

5. I've been told that Conrail does not own office space in Springfield and that it must rent space to house its operations there. What is the total area of office space in the New Haven office building? How much space currently is being occupied by the Northeast Regional Office? How much is occupied by other Conrail offices? How much is now vacant? What will be done with the vacant space?

How much office space does Conrail own in Springfield? How much space does it now rent in Springfield? How much does it plan to rent next year? What is Conrail paying for the space it now rents? Is all the rented space suitable for offices?

There is approximately 90,000 square feet of office space in the New Haven General Office Building. Approximately 62,000 square feet are presently in use by Conrail employees. Consideration is being given to leasing the unused space. We expect to lease 28,000 square feet in the Springfield passenger station once consolidation of all New England Division forces at Springfield from Westerly, Mass., Providence, R.I. and New Haven, Conn. has been accomplished. The space in the Springfield passenger station presently does not adequately meet our standards, however, lease negotiations underway now are expected to result in the necessary improvements.

6. What was the total cost of moving Conrail's work to Springfield; that is, salaries, rent, and Title V compensation for the laid off workers in New Haven? What would have been the costs to Conrail to retain the transferred work in New Haven?

Since only six positions were transferred to Springfield from New Haven, and six individuals did transfer, no Title V costs have been incurred. Rent costs are minimal and there has been no increased salary costs incurred as a result of the transfer.

7. How many people do you have working in New Haven on the processing of Title V claims? For how many states do they process claims? How many claims per month go through that office?

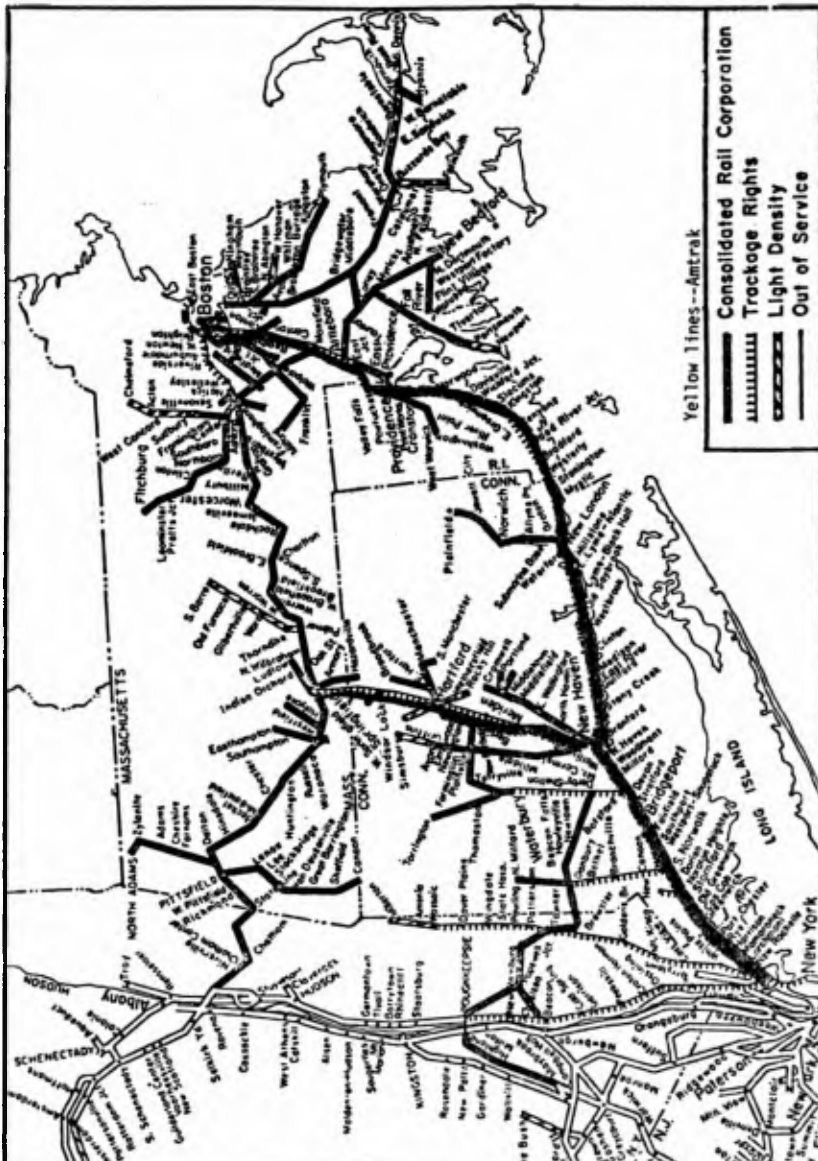
Describe the route that these claims travel. In other words, after a claim is filed in New Haven, how many stops does it take before the worker receives a check? How long does each stop usually take?

How many people do you have in New York and Philadelphia working on Title V matters? For what areas do they process claims? Could the New Haven office handle any or all of this work just as easily?

Regarding question No. 7, there are presently three people working in our New Haven office. They process claims for Connecticut, Massachusetts, Rhode Island and a part of New York. There are approximately 500 claims received in New Haven on a monthly basis and the office processes 500 claims on a monthly basis. In our opinion, New Haven is current.

Title V claims are sent to the employee's immediate supervisor where they are partially verified; then they are sent to the Title V Office where verification is completed, and then they are forwarded to Philadelphia for payroll processing. These three steps take approximately 90 days.

There are presently eight people working on Title V in the New York area (two offices, one in New York City and one in Buffalo), and 30 people in the Philadelphia area. The processing areas are the State of New York and the Eastern region of Pennsylvania. The work of the Title V offices in New York and Philadelphia could not be handled in an expeditious and efficient manner by the New Haven office since all pertinent records are located in areas situated around the various work locations of those two areas.



NEW ENGLAND DIVISION
Northeastern Region

Mr. ROONEY. Thank you. There was considerable less tonnage carried by ConRail in both 1976 and 1977 than was projected in the final systems plan. I wonder if you could indicate for the committee the extent this decline was due to general economic decline in the Northeast and how much was applicable to strikes and other causes?

Mr. JORDAN. Yes, sir. The year 1976 is very difficult as a basis comparison. As you know, we had a truncated year in which we operated for 9 months. I think for the benefit of accuracy and reliability, I would like to concentrate on 1977 for our plan as well as the final system plan.

Basically, we did not achieve our overall goals and we were substantially below the FSP. The principal difference lies in the amount of total tonnage we carried. My recollection for the number is for the first 3 years of our operation we would have carried 50 million less tons of coal than was projected in the final systems plan.

Most of this coal was not carried because it was not moved in the Northeast. On the other hand, we have had car shortages and difficulties with locomotive power. As a result, we did not pull all of the fright that was available to us, not only the coal but in general merchandise traffic.

Finally, the winter of 1976–77, followed by the winter of 1977–78—you will forgive a parenthetical expression, but it is a little hard to understand how each bad winter that we have is always the worst in 100 years, and I have not figured out how they know that—but, in both cases, we suffered losses in revenues and customers, and in many cases, many areas were shut down to rail operations.

You will recall this last winter the snow in February shut down the Providence area for a whole week. As a result, we were unable to move our equipment. We were frozen in. The end result was that we did not move the traffic. For the record, I will submit to you, if I may, the details of our business plan. I will break this down by a dollar amount.

Mr. ROONEY. I would appreciate that.

[The information requested was not available to the subcommittee at the time of printing:]

Mr. ROONEY. Mr. Jordan, on page 3 of your statement you state, you "can now identify a number of problems which, for the most part, must be solved by institutions in cooperation with ConRail and which critically affect ConRail's ability to succeed."

I wonder if you could elaborate on that statement and indicate what problems you had in mind and what institutions you might have been referring to?

Mr. JORDAN. Yes, sir, I think there are two principal problems which I would identify for you. The first is the matter of the labor negotiations which we have been undertaking for the 2 years since we commenced operations on April 1, 1976.

Under the statute, we, as were the brotherhoods, were required to reduce the collective bargaining agreements for each class and craft. As I recall, they were to be reduced from 285 total agreements to about 35 agreements. Those negotiations have continued forward throughout the last 2 years and, at the moment, without discussing them in public, if I may, since I do not think that would be beneficial or favorable for any party, we believe those negotiations are moving forward with considerable progress.

Nevertheless, we are not able to give unilateral approval. This is a collective bargaining process.

As the Secretary identified in his statement and as has been identified in the summary of the business plan, we anticipate substantial labor savings from improvements in our agreements. They are separate from the productive improvements which are identified in such areas as terminal improvements, car utilization, et cetera.

The second area, here I will refer to institutions, goes to the question of regulation. It is our view, in general, the nature of regulation, as it has been imposed upon the rail industry, and in particular on ConRail in the Northeast, is not beneficial to the progress of the corporation as well as to the rail industry generally.

Several months ago, you held hearings at which you asked me to be one of those who testified. You may recall I indicated at that time that the dynamics of the industry and the changes that are taking place with our customers are simply beyond the process of regulation as it is presently in place.

We believe, over the next several months, we can identify and bring forth a program for regulatory change which we trust will be not only beneficial to the company but which will allow us to be more responsive to the shipper and more responsive to the needs of the communities we serve.

Mr. ROONEY. I wonder if you would comment on the number of employees that you have. There has been some criticism in the past week or two about ConRail having too many employees. Would you like to comment on that?

Mr. JORDAN. Certainly. Our 5-year plan, which will take us out to 7 years in ConRail's experience, projects a final employment of about 83,000 average in 1982. This compares to 94,000 on April 1, 1976, which was down from the employment of the bankrupt properties. A number of people simply did not transfer and they were surplused under the title 5 provision which Mr. Skubitz and the Secretary discussed at some length. Today, we are operating with approximately 86,000 people. However, we are bringing to our labor forces about 3,000 people for the benefit of our accelerated rehabilitation program. These people do not work during the winter months when it is not possible to lay track.

I think it would be fair to say that on a to-date basis, we have moved with dispatch on a reduction of our surplus people. In the future, the results of our efforts will come from such programs as terminal improvements, and hopefully, from the collective bargaining agreements. The results are less from the identification of people not performing needed tasks, but rather, from reorganizing the efficiency of the operation so we need less people to carry out the work.

For example, it is not possible, in our judgment, to walk in and identify every third person as surplus when in fact they are performing a valid function. What you have to do is reorganize the nature of their work to make sure they are not doing tasks which are no longer required.

I should add, if I may, a couple of additional comments. Mr. Skubitz quoted a figure of 56 percent labor costs. I think this number is closer to 63 percent. So, the problem is even more severe than he indicated. He probably did not include our fringe benefits.

Mr. ROONEY. What is it in the private sector?

Mr. JORDAN. 52 percent for the rest of the railroads.

Mr. ROONEY. Why is there that great disparity?

Mr. JORDAN. One cause is that we operate a lot more passenger trains than anybody else. We have 10,000 people employed on our passenger train operations, particularly on the commuter operations. But, if you exclude those, the relatively higher level of ConRail employment does not change a great deal.

Mr. Skubitz is right, this factor of operation has a lot to do with the labor agreements which are not consistent with the rest of the industry. Moreover, I think it has to do with the number of people we have today fixing the railroad. We are not laying track magically out there, Mr. Chairman.

We are fixing 25,000 cars in 24 months; we are laying 5 million ties a year. That is being done with people. Yes; they use machines, but there are big gangs out there working with them. We are not going to fix the railroad without utilizing people to do so and for the next several years, we are going to continue to have more people than other railroads until we can get ConRail back where it can provide service.

Mr. ROONEY. On page 7 of your testimony you indicate there has been a comprehensive program which is about to be undertaken to improve car utilization. I wonder if you would comment on this. As I understand, the car utilization is one of the major problems facing ConRail, is that correct?

Mr. JORDAN. You are absolutely correct. It is a serious problem. It was identified 3 years ago in the final system plan as a serious problem. In fact, in my judgment, it was perhaps the lynchpin or keystone of the whole Final System Plan improvement plan. Improved car utilization is not only to reduce costs, but reduce the capital requirement for buying new cars, and better utilize those which are available. I think there are many misunderstandings about car utilization.

At the Southern Pacific, they have the so-called TOPS system, which is the most highly regarded system in the industry today to providing an answer to car utilization. It provides a means for people to make better decisions to get better utilization.

We have studied the question and I know many people think we study questions too long, but we are looking at a $60 million investment just to bring the system up to a point where it is usable. I do not think we should undertake such an investment without expending a little time and effort on it. As a result of that study, we concluded there are benefits in car utilization which would accrue to the corporation with the installation of the system.

On the other hand, the study said it would take about 4 years to get it installed. The final system plan did not provide for even 4 days to get it installed. It assumed we would have the system almost immediately. As one of these people who participated rather actively in the development of final system plan, I am guilty of participating in that judgment. It was not a very smart move on our part in those days.

Before ConRail made the decision to proceed with the $60 million investment, we took a better look at the discipline required on the part of those using the system and concluded we already had in place the rudimentary facets of a car utilization system that would better discipline our people.

We could, in fact, with a rather more modest investment, which we estimate at $14 or $15 million, achieve the entire benefit of the car utilization improvement as projected with the basic system.

Where we are today is moving ahead on the latter approach. We have a test going on in the larger Baltimore area, and extending into Pennsylvania, which will improve car utilization, we believe. It is a documented program.

Then, we are moving forward with the development on a larger system. I think Mr. Spence should comment on the value of such a system. The operational mode is going to be a requirment to run a company of the size ConRail will be some 5 or 6 years out.

Mr. SPENCE. Thank you, Ed. Mr. Chairman, Mr. Jordan has outlined this so succinctly there is little to add. I think we do have to go back to one of the fundamental considerations of the final system plan, that the simple installation of a massive, integrated realtime, consecutive reporting data system would be cureall for the utilization problem. As Mr. Jordan has pointed out, the simple imposition of such a system is not the answer.

One of the sayings that we used to have in first looking at data systems is you cannot impose a system until you operate systematically. The railroad that we took over in April of 1976 certainly was running anything but systematically.

First of all, it was a collection of systems. One of our first challenges was to organize the system in a cohesive way so a system when it was developed would have some meaning. As Mr. Jordan has pointed out, we have been hard at work reorganizing the opeartion, itself, so that at a point in time, we would make the installation of the system effective.

One of the underlying things we have to do is reorganize the freight schedules themselves because they have existed on paper from the beginning of the Penn Central many years ago. They have never been reorganized. They have been structured around those earlier schedules.

We have been working these 2 years to understand and reorganize those schedules into a realistic schedule that would have meaning and that would be understandable to people. I am happy to tell you we are ready to cut these off this May 15.

The other thing that is so important in making a system work and particularly in lining up your schedules is terminal schedules. Because road schedules are fine, but if you do not schedule your terminals, the relationship to movement of cars is nonexistent.

We have been hard at work, as Mr. Jordan mentioned, on terminal improvement programs which will provide internal scheduling within the terminal. We are cutting in about nine terminals during the summer. This terminal improvement program will be an integrated system so the people understand the internal flow of cars within the terminal.

Then, as Mr. Jordan mentioned, we have what is the pilot model of real car distribution in the Baltimore system, a pilot system program expanding to the whole system by this year. As he pointed out, we will be developing and using the existing system and cleaning it up in parallel with developing the large-scale system that would take too many years to build, create, and to impose on that system.

So, I agree with Mr. Jordan that to have spent the money dreaming that a big system would have cured our immediate problems would have been foolhardy and it would have been wasteful. I wholeheartedly agree we have adopted the proper course of action in solving first problems first.

Mr. ROONEY. Thank you very much. The response is very gratifying. I hope it works.

Mr. JORDAN. So do we, Mr. Chairman.

Mr. ROONEY. The distinguished gentleman from New York, Mr. Murphy, is recognized, who is also the chairman of the Commitee on Merchant Marine and Fisheries.

Mr. MURPHY. It is a pleasure to see you today. We have a little railroad in New York City. It is called a rapid transit system. The city had to take it over and when it took it over, it was probably at the bottom of its operational maintenance, and any other category you want to look at.

It is probably not unlike the system that ConRail inherited at the very bottom of the economic cycle of those railroads within their bankruptcy.

This committee was partly responsible for the 3–R and 4–R Acts and where we are today is the funding—what might appear to be necessary funds for the further continuance of ConRail. But in the 3–R Act, there was a very serious statement made that the creation of ConRail would still preserve competition as far as areas were concerned.

In the New York area, I do not think we have seen a preservation of competition. I think we may even see a stifling of competition. I am speaking particularly about the fact there is no competitive line into New York.

I brought this to the attention of ConRail. Mr. Cliff O'Hara, from the port authority has worked closely with this. When we did the 4–R Act, I offered an amendment that stayed in and, in fact, is the law today. That was on rate equalization.

There are probably two areas of rate equalization. One would be the equalization of rates from an area 300 miles west of the Northeast ports, and rates were to be equalized to those ports so one port would not enjoy a competitive advantage over the other.

It had its genesis in the 1963 Supreme Court decision that equalized those rates. We have seen that rate equalization runs into trouble on an interpretation, and the interpretation is that trailers on flat cars and containers on flat cars are treated differently than freight cars and freight movements into the East.

Then, in fact, we come down to perhaps what you might call a special case which the Federal law dealt with and that was the equalization of rates within the Port of New York. The amending language, which I offered, was accepted. In fact, the gentleman from Texas, Mr. Young, was very helpful in that conference much to the consternation of the Senator from Maryland, who, at the time, had sought to strike that language.

I think most people in the room are well aware of those efforts. But, it is in the law that the rates within the Port of New York or within a port—any port—will be equalized. When I questioned the U.S. Rail Association yesterday, in a series of questions, I specifically went to the question of equalization within the ports and I referred to a letter that was signed by John Sweeney, who was ConRail's vice president for governmental affairs.

He has addressed it to Stuart Johnson. In his letter, he thanked Mr. Johnson for his letter and enclosures of September 23, 1976, going back shortly to after the effective date of the act. It reads: "In regard to your concern over certain tariff publications which would disrupt the import-export part to or from New York Harbor by providing for a lower level or rates to the dock facilities on the New Jersey side than would apply to dock facilities on the New York side of the harbor, the effective dates of the tariff to which you referred have been postponed. and it is ConRail's intention to cancel applications for rate changes on some of the commodities involved and to amend tariffs on the other commodities, so as to make the rate application on the involved commodities the same to all points in New York Harbor. For your information, the tariffs to which you referred were filed in continuation of a policy which had been adhered to by one of the bankrupt roads whose lines are now operated by ConRail. On its face, that would seem to be an adherence to the policy of rate equalization within the ports.

But, ConRail filed tariffs that had higher charges to areas on the New York side of the port than the areas on the New Jersey side of the port. That was 1976. This is 1978, and we still have the same condition existing.

We see that the State of New York has added $9.9 million to rail renovation in the Brooklyn district terminal area and in parts of the rail operations in Brooklyn. And, yet, we see this discrimination and a consequential grip in freight being handled on that side of the harbor.

Why would ConRail file rates that were discriminatory within that port?

Mr. JORDAN. Mr. Murphy, do you wish me to address only the question of the intraport rates at this point?

Mr. MURPHY. Yes.

Mr. JORDAN. As your prefacing remarks so fully covered the whole situation, you are clearly more expert at it than I. But the issue. I believe, is the question of costs and the movement of those trailers on the New Jersey side to the New York side. The nature of the port operation in terms of its facilities is one of homogeneity, as you know, and the New York-New Jersey Port Authority is attempting to operate on that basis.

As recently as yesterday I discussed not only the intraport rates but the question of interport equalization with both Mr. Sagner and Mr. Goldmark. Within the port. the question is can we absorb that cost? Is that a reasonable cost to absorb or are we then noncompetitive in relationship to our primary competitors and losing money on that freight.

We do not think we would be competitive with the truck operating railroad which is the serious competition for the New York market for your trailer on flat car business. Nor do we believe—and I think the figure will clearly indicate that that we could absorb the cost of moving those trailers. from the New Jersey side to the New York side and stay in business.

If I heard the Secretary and the chairman correctly. $1.3 billion is the last time. I think under those circumstances, a private corporation is hard pressed to understand why it should absorb a cost which will make it not only noncompetitive but lose money and continue in business.

It would seem the difficulty in New York lies in the operation of the port itself and the clearly difficult problem that is there, which you are more familiar with, of trying to balance the respective employment and economic development opportunities on either side of the port which is clearly part of, I gather, the original charter of the New York-New Jersey Port Authority.

Mr. MURPHY. Mr. Jordan, the law clearly states that rates were to be equalized within a port. You have just admitted a violation of the law.

Mr. JORDAN. Mr. Murphy, I do not think that is what the law states. I think it provides for authority within the Interstate Commerce Commission to act in this manner. It would be my belief and that of our counsel that that is where the matter lies, not with us, that we are not violating the law.

Mr. MURPHY. I would say from a position from where I sit that you filed the rate knowing that the law calls for an equalization of the rate within that port and that you filed an illegal rate.

Mr. JORDAN. Clearly we see the problem from two views, as you said from where you sit, but from where I sit, we are clearly adhering to the law.

Mr. MURPHY. And you have read the law and counsel has advised you accordingly?

Mr. JORDAN. Yes, sir.

Mr. MURPHY. By way of ConRail to Kearney, N.J., and then to Port Elizabeth or Port Newark, the cost would be different than if you moved to Kearney and then used drayage to go over to Brooklyn. There obviously would be higher cost in that extra incremental movement.

But the law was written to equalize rates within that port and not have the economic entities within the port discriminating against each other.

Mr. JORDAN. I have commented on our interpretation of that act. I think that the matter should be brought before the Interstate Commerce Commission, to whom I believe that the language you specifically refer to as you having authored it.

Mr. MURPHY. At this point, I am going to ask the chairman of this subcommittee to ask the Interstate Commerce Commission to come here, along with representatives of the New York Port Authority, the Brooklyn eastern district terminal, the Staten Island Railroad Corp., the Chessie system, ConRail—I hope I mentioned the Port of New York Authority——

Mr. JORDAN. You did not include the D. & H.

Mr. MURPHY. I think perhaps the previous leadership might have been delighted to have a rate differential within the port of New York and it was in the light of that fact that the law was written to have equalization of rates within the ports.

Could we do that, Mr. Chairman?

Mr. ROONEY. The request of the gentleman is granted. The committee will meet on Monday at 10 a.m., the room to be announced.

Mr. MURPHY. I will be happy to provide a room if the gentleman cannot find one. I would like to continue, Mr. Chairman, I have some other questions.

Mr. ROONEY. I hope it will relate to ConRail and not to New York.

Mr. MURPHY. I think it probably relates to other States as well as New York.

Mr. ROONEY. You may proceed.

Mr. MURPHY. ConRail did not adopt a final system plan that had the Chessie moving from Philadelphia through Cranford junction so it could service Howland Hook. That is a terminal that the city of New York has made a $100 million investment in there.

The Federal Government has put $2.2 million in the Economic Development Administration alone to improve a rail spur into Howland Hook. Last year's level of container travel was 155,000 containers with the Farrell Line, assuming American Export Line will probably add another minimum of 30,000 containers—American Export, Farrell, and U.S. Lines, which make that New York port terminal probably over 200,000 containers.

That is not a small operation. We feel that the operation without any competition—to move to Kearney and not have a rail link direct from Philadelphia through Cranford junction to the Staten Island Corp. is, in effect, discriminatory because it has stopped competition between ConRail and the Chessie system.

Would you respond to that?

Mr. SPENCE. The Chessie system, since the failure of their negotiations and the pull out of absorptions of portions of ConRail which the predecessor roads intended to go to the Chessie, has really never made any request for operating rights between Park junction and Cranford junction, and I know of no discussions.

If they wish those operating rights, then ConRail has stood ready to discuss that request, along with many other discussions we have with Chessie system for joint use of facilities where they might be used.

I know of no request for that operation. We do have a run-through operation with the Chessie that runs through Park junction just as if it were a through-train operating between Park junction and the New Jersey area.

Mr. MURPHY. But you do have a per car service to Cranford junction that you pay the Chessie——

Mr. SPENCE. I suppose you mean a car-load service.

Mr. MURPHY. Right. You pay on a per car basis to permit the Chessie to move it not on a regular service basis.

Mr. SPENCE. I presume you are talking about giving Chessie trackage rights to operate their own transportation through Park junction.

Mr. MURPHY. On a per car basis——

Mr. SPENCE. You mean for us to handle their cars on a different basis, on run through trains?

Mr. MURPHY. That is right.

Mr. SPENCE. I know nothing about that. I am sorry. I know of no request for trackage rights.

Mr. MURPHY. You have a per car charge for traffic from Philadelphia up the Cranford junction. It does not go on a traffic basis and the charges are higher. Staten Island Rail Corp. is here. They are part of the B&O, part of the Chessie and we have lost that direct link except on that per car charge, which places us at rate disadvantage again with the Port of New York.

It is basically because you are in violation of the equalization to the Northeast ports as well as rates within the port.

Mr. JORDAN. We would like to respond to you in a more detailed way than we can do sitting here at the table. Both of us are aware of the Chessie's lack of interest in proceeding with their involvement. In the area as a result of the breakdown of their negotiations which occurred in 1976.

I cannot, nor can Mr. Spence, respond in detail on this. If you would permit us to——

Mr. MURPHY. Perhaps you can respond on Monday.

Mr. JORDAN. I think we can have somebody here who can.

Mr. MURPHY. On trailers on flat car rates and the container on flat car rates out of Peoria, Ill., that clearly gives more than an $80 advantage to the Port of Baltimore over other Northeastern ports, why is that permitted to happen?

Mr. JORDAN. Let me go to the Supreme Court decision of 1963 which did not apply to the TOFC and never did. The rates which are set today from points east of Chicago for the TOFC on one and two trailer lots are based upon a mileage rate competitive with the trucks to each of those trucks.

That is the principal competition. That is why we believe we must compete on a price basis. Trucks re cheaper into Baltimore. We must compete with them into Baltimore. At the same time, we may have maintained the tariff structure on larger lots of 10, 30, and 60.

We provide for an equal rate to each of the major Atlantic seaboard ports.

Mr. MURPHY. Are you comparing that with some truck tariffs which are based on a mileage basis; on truck tariffs based on a 100-mile basis and certain minimum weights? Which are you dealing with?

Mr. JORDAN. Mile and——

Mr. MURPHY. Mileage on predominate rates on file between other ports east of Chicago and the Port of New York and the Port of Baltimore and Newport News which are the preponderant rates?

Mr. JORDAN. I cannot tell you the answer to that.

Mr. MURPHY. I will have a list of questions in this area prepared and delivered to your office at 9 a.m. tomorrow because I think the intent of that Court decision was on traffic moving from that point 300 miles west to the Northeastern ports and clearly it includes TOFC and COFC traffic. I will have no other questions at this time, Mr. Chairman.

Mr. ROONEY. Thank you very much, Mr. Murphy.

I would like to direct this question to your board, Mr. Jordan, and anyone of the members that might respond to it. When did the board first begin to believe that ConRail would require additional public sector funds to become financially self-sustaining?

Mr. JORDAN. Why don't we start at one end or the other, if it meets with your approval. Mr. Nicholson.

Mr. NICHOLSON. This is a moving picture, as Mr. Jordan pointed out. I think to go back to the very beginning, the operations in the 9 months of 1976 were quite favorable, but with the very bad winter of 1976–1977, the first quarter ran a higher loss than had been anticipated and it was pretty much from that point on that we knew we had probler

Just because there were problems, there were over runs and the final systems plan did not anticipate all of these problems at that time it was written. It was uncertain whether ConRail would require the application of more Government money.

There would be other alternatives and other alternatives were identified and examined and some were applied. A so-called recovery plan was designed and implemented. It took some months to realize that other offsetting losses were occurring so that the recovery plan did not have its full impact.

So, during the summer it became clear that we were not on a long-term path of financial availability so our drawdowns were qualified to serve an accompanying investment and requests were qualified from about that time on.

Along toward the fall of 1977, it became clear that unless some pretty fundamental reformations took place there would be a requirement for additional funding, whether it was Government money, private sector money, preference shares or loan guarantees. What form it might take was still in doubt.

In conclusion, I think it was around the time of the January board meeting that it became clear the most responsible course of action we could take would be to identify the need for additional funding, in our judgment, and find out whether or not our partners in this operation, USRA, the Treasury, the Department of Transportation, and the Congress, also believed that that was the best approach to go on.

I would say the January board meeting—which I believe was on January 9—and on January 31, we had a special board meeting and it was at that point that this board concurred with the specific amount of funding that the management proposed.

So, what has been brought forward, the $1.3 billion of Federal funds, was the specific amount proposed at the January 31 meeting and concurred in by the board.

Mr. Rooney. To what extent did the board actually participate in the development of the 502 plan?

Mr. Nicholson. A board cannot, itself, conceive or employ a plan. The board can react to proposals, which it did, and with considerable depth and with some diversity of opinion. The management then reacted to the board's expression on the proposals and the proposals were modified in accordance with the board's intent.

The plan is a management plan concurred in by the board.

Mr. Jordan. Would you like to hear from each member?

Mr. Rooney. It is entirely up to the board. Anybody wishing to comment may do so.

Mr. May. In a situation, running for 5 years, certain assumptions have to be made, maybe to elements not within the control of the company. This has to do in this particular case with the economic development in the Northeast, is it going to lead or lag or going along about the same as the national economy.

What about such things as weather, strikes, floods, and disasters that affect maybe the section of the main line of the railroads or the plans of companies or production of its customers? What about the demand for rail freight service within the area? What about the railroad's ability, at that time to meet the demand as it occurs?

These are things not all within the control of the corporation. Another factor is the rates that might be charged for the service, which, in fact, as Mr. Jordan has pointed out, are not entirely within the control of the corporation either. In developing such a plan, I think that the board, which I am sure is keenly aware of its responsibilities to the Congress and to the USRA, suggested and requested that the management develop a plan which could reasonably be met by the corporation—and by that I mean one that there is a better than 50–50 chance of meeting in their judgment, in the future. If you wanted a 90-percent chance, by making greater contingency allowances for these things outside the control of the corporation, it would require a higher figure because you would have higher contingency allowances within the plan.

We wanted something that was a reasonable request to take to the Congress. I think to that extent there was some guidance on the part of the board, as to the type of plan and the degree of risk that should be taken by management in developing such a plan.

Mr. MEYER. There was vigorous discussion at the end of the first discussion—I think at the end of the November 1 meeting—a member of the board, who is not here, jokingly said to me afterward, we served on another board where if you move the arbitrary one in much it was considered director rebellion.

How different it is at ConRail board meetings, we did go through the numbers. I think it is fair to say the staff revised several of the assumptions and probably some of the final output of the plan as a result of these quite intensive board discussions.

Mr. ROONEY. I must say, Mr. Jordan, you do have a very prestigious board and with outstanding backgrounds of the members. I think this committee, I think this Congress, I think the President, as he has indicated, will go along with this $1.3 billion.

I only pray that I will not see you back here in 2 more years with another 5-year plan.

Mr. JORDAN. Mr. Chairman, I add my own appreciation to you for the quality of the board that was selected by that process. Sometimes it is inevitably a hazard. The day of the first meeting, we were virtually strangers. It has worked extraordinarily well. I trust none of us will be back here in 2 years—or perhaps my replacement will.

Mr. ROONEY. Thank you very much.

Mr. JORDAN. Thank you very much.

Mr. ROONEY. Our next witness will be Mr. William T. Anthony, chairman of the Railway Progress Institute.

I might say Mr. Anthony comes to this committee as a constituent of mine and as an outstanding example of the Bethlehem Steel Corp. We welcome you, along with our postmasters to this distinguished committee today.

STATEMENT OF WILLIAM T. ANTHONY, CHAIRMAN, RAILWAY PROGRESS INSTITUTE

Mr. ANTHONY. Mr. Chairman and gentlemen, as you have indicated, I appear before you today on behalf of RPI, the national association of the railway equipment and supply industry. RPI has a member-ship of some 175 companies that manufacture freight and rail passenger cars, locomotives, components, rail, track materials, signal systems—in short, everything that goes into making a railroad or transit system. RPI member companies employ more than 500,000 people. We appreciate this opportunity to appear before you in support of providing authority for the U.S. Railway Association under section 216 of the Regional Rail Reorganization Act of 1973 to purchase an additional $1.3 billion in securities of the Consolidated Rail Corp.

The members of the Railway Progress Institute earnestly hope and want ConRail to succeed. The new rail system was established by Congress to begin operations April 1, 1976. Its basic aim is to provide the heavily industrialized Northeast section of our country with essential rail service in a private-sector environment. We are certain it is in the best interests of the country that ConRail be given the additional help needed to continue trying to meet this goal.

In the two years since ConRail came into being, substantial progress has been made in revitalizing rail service in the Northeast. Despite major unpredictable setbacks which were experienced because of two very severe winters, the goals of the USRA final system plan have generally been met.

However, ConRail's planning process now concludes that they cannot continue to make progress at the rate projected in the FSP. Additional funding and a lengthening of the time framework originally established is needed if ConRail is to continue in restoring reliable rail service in the Northeast. A commitment by the Congress now respecting full funding will give ConRail the lead time necessary to make equipment and plant improvements needed to upgrade service and, thus, profitability.

We at RPI also feel that it is important that this matter be dealt with completely independent of the financing available under title V of the Rail Revitalization and Regulatory Reform Act of 1976. The Congress was quite clear in enacting the 4–R Act that the financing available in title V is to be used by railroads other than those that are part of the Northeast reorganization. We hope that Congress in its wisdom will continue that policy as it is quite obvious the Federal financing is sorely needed by railroads in other parts of the country. A number of other railroads have applied for loan guarantees and preference share financing under the 4–R Act, and to finance ConRail from current, 4–R Act authorizations might jeopardize those applications.

Other witnesses have been here to explain to you why you should look again at ConRail's needs. Many critical problem areas such as a reduced revenue base, the poor condition of the rolling stock fleet, and high labor costs have been identified. ConRail, in a recently released 5-year business plan, tells of several projects initiated during 1977 that are of fundamental importance in guiding ConRail's future course. New marketing and investment strategies, efforts to reduce labor costs, development of improved costing systems, and improving car utilization are part of this business plan to deal with ConRail's problems.

The cornerstone of the 5-year plan is a request, which RPI wholeheartedly supports, for an additional $1.283 billion in Federal financing. These funds represent slightly more than 10 percent of the total

$10.595 billion investment which ConRail expects to make in the next 5 years. Expenditures of $4.662 billion for maintenance of way and rehabilitation, $3.890 billion for maintenance of equipment, $935 million for additions and improvements, and $1.108 billion for equipment acquisition are being contemplated by ConRail to improve its physical assets and, thereby, improve service and become a viable, profitmaking corporation.

ConRail has made considerable progress in its first 2 years of life. By the same analysis, there is still a long way to go. It is the fervent hope of RPI that Congress will continue its support for what may be the last chance to provide, through the private sector, the Northeast with essential rail service.

A look at the high operating deficits and high subsidy levels of nationalized railroads in major industrial nations demonstrates that nationalization, quite obviously, is not a viable alternative.

In summary, the challenges facing ConRail are greater than anticipated. They will need more time, effort, and resources to address the problem. Some progress has been made; and the additional Federal financing of $1.3 billion requested in the ConRail 5-year plan is one step toward continued progress in restoring reliable, private sector rail service in the Northeast. The Railway Progress Institute urges this subcommittee to promptly make available the financing for ConRail to continue this important work.

Mr. Chairman, I would be happy to try to answer any questions you or the other members of the subcommittee may have.

Mr. ROONEY. Thank you very much, Mr. Anthony, for endorsing this legislation. I am sure that ConRail will be very pleased to hear of your endorsement.

I also want to take this opportunity to personally thank you and RPI for the assistance you gave this committee back in 1976 when we were drafting this legislation. I can recall how helpful your association has been.

Thank you very much for your testimony this afternoon.

Mr. ANTHONY. Thank you, Congressman.

Mr. ROONEY. Our next witness will be Mr. Martin G. Hamberger, chairman, Commonwealth Coalition. He is no stranger before this committee. He is a former administrative assistant to Senator Scott. Mr. Hamberger, we welcome you before the committee this afternoon.

STATEMENT OF MARTIN G. HAMBERGER, CHAIRMAN, COMMONWEALTH COALITION

Mr. HAMBERGER. Thank you very much. If I may, I would like to add one or two things. The Commonwealth Coalition is a voluntary nonprofit association of individuals and groups interested in advancing the Commonwealth of Pennsylvania.

The second is that in my capacity as an attorney in Washington and Harrisburg, I have had, do have, and except to have, clients interested in transportation in all of its forms, but this statement is not submitted in behalf of those clients, past or present or projected. It is on behalf of Commonwealth Coalition.

I would like to summarize, Mr. Chairman, my statement.

Mr. ROONEY. Without objection your full statement will become part of the record.

Mr. HAMBERGER. Thank you, Mr. Chairman.

I have four points to make. No. 1, ConRail is absolutely vital to jobs in Pennsylvania and Pennsylvania industry cannot exist without its effective service. No. 2, it is the responsibility of the committee and the duty of ConRail to see to it that from this point on, there is built into the ConRail system those policies and practices which insure a vital and effective transportation service.

No. 3, we believe that one of those practices, one of those policies is rail electrification, primarily between Harrisburg and Philadelphia as an initial route and now under study by ConRail itself.

Fourth, we ask, in the context of this legislation, whatever form it may take, the committee and the Congress give positive direction to ConRail, that the legislation contain a specific assertation of congressional dedication to ConRail's innovative leadership and improved rail transportation through such things as rail electrification.

Mr. Chairman, I thank you for your kindness. I will be pleased to respond to any questions you may have.

[Mr. Hamberger's prepared statement follows:]

STATEMENT OF MARTIN G. HAMBERGER, CHAIRMAN, COMMONWEALTH COALITION

Mr. Chairman, thank you for this opportunity to present testimony before your Subcommittee hearings on legislation related to ConRail. This testimony by Commonwealth Coalition is submitted on behalf of the many thousands of Pennsylvanians whose jobs depend on efficient ConRail service. ConRail provides the transportation necessary to Pennsylvania's steel industry and other basic job providers as well as to job providers in smaller cities and towns all across the Commonwealth. Historically, this rail transportation net has been one of the key bases of Pennsylvania's competitiveness in the national industrial picture. There is no escaping the basic premise that jobs in Pennsylvania depend on ConRail and it is to an enhanced and viable ConRail that Commonwealth Coalition addresses itself today.

Firstly, it is important to put the present funding request in perspective. There may be persons who question the additional use of federal funds which are requested before this Subcommittee. To do so, however, is to ignore the horrendous condition of this rail system when it became ConRail and to fail to appreciate the enormity of the task and the scope of the achievment that ConRail has gained. The ConRail organization from top to bottom is to be congratulated for its work during these difficult years and the tremendous strides it has made.

Second, these funding requests form an appropriate opportunity to focus not only on what ConRail has achieved but on where it can be expected to go and how it can be expected to get there. Because of the special nature of the corporation and because its operation is affected with so vital a public interest, this subcommittee quite properly takes an aggressive and broad approach to its oversight function and to its responsibilities for the future of ConRail.

Commonwealth Coalition is not taking a position of specific legislation so much as it is urging that the consideration of any legislation include the following factors:

(a) The special public interest inherent in ConRail.

(b) The absolutely vital nature of ConRail's transportation service to jobs in the Commonwealth of Pennsylvania.

(c) The need to insure that ConRail's record of achievement is continued and enhanced.

(d) The need to now build into the ConRail system those policies and practices which insure its vitality and effective transportation service.

Let us examine this last point in greater detail since it is the matter which now requires more attention from the Congress, the executive branch and ConRail itself.

Achievement of ConRail's mission to become a self-sustained transportation system requires close attention to these policies and practices which insure its vitality and efficient transportation service. Observers are impressed with the priority that ConRail has given to strategic planning and the impact that the strategic planning group has in the corporation. We believe that ConRail recognizes the complexity of the services it must provide along its system and particularly in the Commonwealth of Pennsylvania where cargoes range from coal to diverse services rendered smaller shippers.

Particularly encouraging to Commonwealth Coalition is the current study by ConRail of the advisability of rail electrification between the Enola yards in Harrisburg and the Conway yards north of Pittsburgh. This ConRail mainline route carries more tonnage per mile than any rail route in the United States. Its electrification is a logical extension of the electrification of the Philadelphia to Harrisburg mainline completed in 1938.

We believe that the study underway by ConRail will verify the outstanding return on investment and the advantages of rail electrification shown by previous studies not only on this system but on many routes throughout the United States. We believe that the Quad-R Act, title IX, rail electrification study by the Federal Railroad Administration and the new work being done in the Department of Energy further support the advisability of rail electrification as a national goal for the purposes of rail service and energy conservation.

Rail electrification is considered by many persons and organizations to be a quantum step by which rail service can be substantially improved. The desirability of moving toward rail electrification was specifically recognized by the inclusion of a $200 million loan guarantee authorization in the Railroad Revitalization Regulatory Reform Act of 1976. Commonwealth Coalition supports rail electrification not only in order to help improve ConRail but also because its implementation would create many thousands of jobs in Pennsylvania for construction and equipment supply.

However, we suggest that whatever the operational and long-term advantages of rail electrification may be, ConRail's decision to pursue it will be strongly influenced by the attitude of the Congress towards ConRail's operation in general.

For this reason, it is important that this subcommittee take this opportunity to assert its dedication not only to ConRail's continuation, but to its advancement through logical and operationally advantageous steps such as rail electrification. It is important that in its decisionmaking processes, ConRail's management knows it is dealing with a Congress which expects it to do more than conduct a rear-guard action against decline. Congress expects ConRail to provide innovative leadership and substantial improvements in rail transportation. And, most importantly, ConRail's management must know it enjoys the support of the Congress for the leadership it will take to initiate a new rail electrification program.

Mr. Chairman, on behalf of jobs in Pennsylvania, Commonwealth Coalition suggests that whatever form this legislation may finally take, it should contain a specific assertion of Congressional dedication to ConRail's innovative leadership and improved rail transportation through such steps as rail electrification.

Mr. ROONEY. Thank you very much, Mr. Hamberger. As you know, in the 4–R Act we mandated there would be an electrification program. I understand that DOT and ConRail are now conducting studies between two cities as you mentioned. Perhaps I can ask you one question.

In view of the small rate of return by railroad—and I understand it is less than two percent—what justification would there be for a large investment in electrification in the long run?

Mr. HAMBERGER. Studies on rail electrification, on several routes nationwide, particularly those which carry considerable tonnage—and incidently, the Harrisburg–Pittsburgh route is the heaviest per ton mile in the Nation—those studies show the return on investment varies from 17 to 30 percent as a capital improvement investment.

It is a very worthwhile undertaking for a railroad, and for ConRail in particular.

Mr. ROONEY. In other words, it is your opinion, with the electrification we would have an adequate return on investments to warrant a tremendous capital expenditure?

Mr. HAMBERGER. Yes, we would not have the return on investments in the immediate sense, but we would have an improved viability with the system. Some observers believe it would enhance the ability of the railroad to attract higher profit carriage and to compete more effectively with other modes.

Mr. ROONEY. Thank you very much.

Mr. HAMBERGER. Thank you, Mr. Chairman.

Mr. ROONEY. Our last and final witness will be Mr. Stephen C. Bieneman, vice president, leasing division, ITEL Corp., San Francisco.

STATEMENT OF STEPHEN C. BIENEMAN, VICE PRESIDENT, LEASING DIVISION, ITEL CORP., ACCOMPANIED BY ALFRED C. DOSSA, VICE PRESIDENT, FINANCIAL SERVICES GROUP

Mr. ROONEY. You may proceed.

Mr. BIENEMAN. Thank you, Mr. Chairman, for the opportunity to come here today and express our views on ConRail's capital needs and how best to fill those needs. In view of the hour, I might note my comments will take no more than 10 minutes.

By way of introduction, I would like to explain briefly the ITEL Corp. and its current and historic involvement in arranging financing for both the railroad industry and especially for ConRail.

ITEL Corp. markets and leases capital equipment and provides services associated with that equipment to corporate and institutional customers throughout the world. Specifically, ITEL concentrates its efforts in two of the largest categories of capital equipment—transportation and computer equipment. ITEL does not manufacture the products it markets, leases or for which it brokers lease financing.

The leasing division of ITEL was established in January 1970. Since then, through this division, ITEL has arranged lease financings for capital equipment costing in excess of $2.5 billion. ITEL is the largest independent lease underwriting organization in the business. To date, we have completed more than 700 transactions ranging in size from $1 million to $117 million, covering virtually every major type of capital equipment.

As an integral part of our efforts in this area, we maintain relationships with more than 500 investors in the financial and business communities as sources of equity and debt for lease transactions. To date, ITEL has arranged lease financings for more than 300 lessees.

To provide this full range of expertise, ITEL has assembled a lease underwriting staff devoted full time to lease financing. More than 60 professionals consisting of finance specialists, lawyers skilled in tax and contract law, computer science developers and practitioners, and accounting policy experts combine their knowledge and experience to serve our customers.

This professional lease underwriting staff is supplemented by the largest finance lease marketing organization in the business. More than 50 marketing representatives located in 16 branch offices throughout the United States and Canada.

ITEL has been the largest arranger of leveraged leases in the railroad industry. Since 1970, ITEL has been selected to arrange financing for approximately $1 billion worth of railroad equipment.

In 1977, ITEL arranged the first significant leveraged lease for ConRail to finance additional equipment under lease.

I am a vice president of ITEL leasing, with responsibility for marketing to the railroad industry. My colleague, Al Dossa, is responsible for the legal aspects of these transactions.

We would now like to address ourselves to the ConRail question. Specifically, we would like to limit ourselves to three issues. One, what is the perception of ConRail in the financial community; two, in today's market, what are ConRail's potential sources of funds; and three, in light of the above, what financing vehicle would we recommend for ConRail's rail equipment needs.

CONRAIL AND THE FINANCIAL COMMUNITY

The ConRail concept is unique. Nowhere in the annals of U.S. business history have a group of bankrupt railroads, so large and geographically extensive, been formed into one unit with the express purpose of providing adequate and efficient rail service to the Northeast sector of the United States. The vision in the final system plan that ConRail would someday be financially profitable and independent of any Government support was a good one, but perhaps optimistic as to time.

The business community, in general, and the financial community, in particular, have reacted to the formation of ConRail with uncertainty. This is due in part to the aftershocks of Penn Central and in part to a skepticism about the viability of a company formed from bankrupt parts still riddled with many of the problems that caused bankruptcy. To illustrate, the financial community is concerned with limitations which have been placed on ConRail with regard to track abandonment and efficient utilization of labor. Moreover, heavy losses in 1976 and 1977, along with ConRail's 1978–82 business plan request for new Federal financings of $1.283 billion in addition to funds available under the present USRA agreement, have not been reassuring. Thus, the uncertainty in the financial community about ConRail's future has been met by more uncertainty, which has resulted in limiting ConRail's ability to access the capital markets. The limitation imposed by the financial community have largely been to the type and cost of financing.

To date, ConRail has been remarkably successful in securing private sector money for equipment, including $160 million in 1977. However, most of this financing has been in the form of manufacturer assisted leases. Each financing was difficult and future financings will be more difficult as the pool of capital available to ConRail from interested investors is consumed.

In summary, if ConRail is to improve its operating results, it must continue to improve plant and equipment. To do this, ConRail needs substantial sums of capital from the private sector; yet for ConRail to tap this market, uncertainty surrounding ConRail's future must be removed.

CONRAIL'S SOURCES IN THE CAPITAL MARKETS

ConRail, of course, has been investing substantial sums of money in programs to rebuild and add plant and equipment. Because it is a fact that ConRail's option in the capital market are limited, it is important for ConRail to maximize its sources to obtain the greatest amount of private sector money and employ Government funds selectively to meet its gargantuan capital requirements, presently in excess of $3 billion.

Essentially, ConRail has available for equipment acquisition: one, Government funds, either in direct loans or loan guarantees; two, manufacturer assisted transaction; and three, equipment leasing.

Because equipment values in the railroad industry rise, almost linearly, with inflation equipment as collateral has been sufficient inducement to secure ConRail investors. Consequently, manufacturer-assisted transactions for equipment programs and leases afford ConRail an ability to satisfy equipment needs for plant upgrade so that the goal of profitabiilty and financial independence can be attained and more typical financing obtained in the future.

Governmental assistance, on the other hand, should be primarily directed to more difficult financing projects like track and maintenance of way. These projects are, for the most part, regarded as undesirable by the financial community because of the nature of the collateral. Obviously, loans to railroads with solid credit standing for track maintenance or construction are made. However, when inherently poor collateral is coupled with substantial uncertainty about a company's future operations, it is virtually impossible to obtain private sector financing for these projects.

In summary, it is critical that ConRail maximize its private sector sources so that Government resources can be conserved for other projects. This will allow the greatest probability for realization of the ConRail objective.

A FINANCING VEHICLE FOR CONRAIL

For ConRail to maximize the poor of private sector funds at the lowest cost, we would recommend that it continue its programs of financing car needs with tax-oriented "finance leases."

Finance leases are noncancellable over the basic lease term. They are completely "net," meaning that the lessee is required to make a series of rental payments whose sum is equal to the initial cost of the asset plus interest. The commitment to pay these rentals is fixed and unconditional.

We believe this financing method has many attractions for ConRail. Among them are the following: One, 100-percent financing. Leasing provides 100-percent financing, thus eliminating the need to provide a downpayment or compensating balances as is often the case with a loan or conditional sale.

Two, capital conservation. If the choice is between leasing and purchasing with internal funds, leasing conserves ConRail's capital, thus allowing it to be employed in other more profitable investments.

Three, new capital sources. Leasing can often represent new sources of capital for ConRail. By entering into a leveraged lease, ConRail avails itself of another funding source from the capital markets. It brings in the equity investor who usually does not buy first mortgage bonds, debentures, or preferred stock.

Four, cost revenue matching. Leasing allows ConRail to pay for the financing cost of an asset over the period when that asset is producing revenue. There is thus a matching of cost and revenue as is not always the case with major debt issues.

Five, tax benefit unavailability. One of the principal reasons for ConRail entering into a tax-oriented lease arrangement is, of course, inability to fully utilize the tax benefits available from purchase of the equipment, principally investment tax credit and accelerated depreciation. Since ConRail does not have a tax bill because of loss carryforwards, current year write-offs and heavy depreciation deductions from other assets, they can benefit from low lease payments by allowing the owner/lessor to take advantage of the early years' depreciation and ITC benefits which would not otherwise be efficiently used by ConRail.

Six, lower cost. Leasing will always produce a lower cost for use of the asset for ConRail than would be possible with straight debt financing.

Although we would stress that the decision for ConRail to lease is primarily a financing decision, there are other factors of a nonquantitative nature that are also important.

No. 1 is packaging function. One is that leasing performs a packaging function. That is, it accumulates into a single total all the costs concerned with the acquisition of equipment and amortizes them through the stream of periodic rental payments. Included are not only the cost of the equipment and the interest payment on the money provided but also several auxiliary financing costs such as commitment fees, compensating balances, legal fees, administrative and clerical costs and transaction arrangement fees. These auxiliary financing costs may be quite small relative to the size of any given transaction, but in light of ConRail's large equipment needs are too significant to ignore.

Two is flexibility. Leasing is more flexible than other types of financing, particularly in the area of payment. Lease payments can be designed to assist ConRail in achieving certain financial objectives and such is not usually the case with traditional debt financing.

This list of reasons is, of course, not all inclusive but it does indicate many of the principle reasons for ConRail to sue lease financing.

In summary, leasing does provide ConRail with the largest amount of capital, in the most flexible form and at the lowest net cost. More importanty, it enables ConRail to obtain the equipment it requires to upgrade plant when other alternatives are not available. Hence, we must continue to endorse leasing as an important vehicle in the financing of ConRail.

Thank you, Mr. Chairman. I would be happy to answer any questions you might have.

Mr. ROONEY. How much is ConRail indebted to ITEL at the moment?

Mr. BIENEMAN. I do not know about at the present time, but it arranges financing and it is in excess of $10 million. There is now a proposal in front of them for $50 to $75 million of additional equipment.

Mr. ROONEY. Do you believe that ConRail can obtain financing up to $1 billion.

Mr. BIENEMAN. In light of the current uncertainty surrounding ConRails future——

Mr. ROONEY. Probably one of the certainties would be the $1.3 billion they are now asking for.

Mr. BIENEMAN. Without the $1.3 billion, I would not believe that anywhere in the $1 billion of private sector for financing could be obtained, with the $1.3 billion of Federal financing, I think it is possible that the $1 billion of private sector financing could be obtained given the continuation of a good capital management, such as we are in right now.

If the management tightened up, as they did a couple years ago, even that $1 billion in the private sector, with the $1.3 billion from the Federal Government, would be very difficult to achieve.

Mr. ROONEY. Does ITEL only involve itself in leasing to railroads, period?

Mr. BIENEMAN. All segments of the capital market, and railroads constitute an important segment, but they are by no means the only one. There is maritime equipment, computer, aircraft, et cetera.

Mr. ROONEY. From the very beginning, let's say that railroad A wants to come in and talk to ITEL about buying a fleet of locomotives. Go from there.

Mr. BIENEMAN. We would counsel the railroad that in many cases—and we would walk over and look at the particular railroad's economic situation—that lease financing would be the lowest cost and probably the most flexible financing for them. When we have determined that, we would go to the capital market and arrange a fully packaged leverage leasing.

Mr. ROONEY. Do you go to a bank?

Mr. BIENEMAN. Insurance companies, perhaps, any financial institution.

Mr. ROONEY. Do you bring them together?

Mr. BIENEMAN. That is right. We are underwriting it.

Mr. ROONEY. What if there are 20 locomotives that they want to buy? Who would handle that?

Mr. BIENEMAN. The actual railroad would handle that, and sign a purchase contract to ourselves or to the ultimate lessor.

Mr. ROONEY. Thank you very much. I appreciate your testimony here today.

Mr. BIENEMAN. Thank you.

Mr. ROONEY. I have been informed that the committee will meet on Monday at 10 a.m., April 17, in room 2218.

The committee stands adjourned until 2 p.m. tomorrow.

[Whereupon, at 5:30 p.m., the subcommittee adjourned, to reconvene at 2 p.m., Monday, April 17, 1978.]

CONRAIL AUTHORIZATION—FISCAL YEAR 1979

MONDAY, APRIL 17, 1978

House of Representatives,
Subcommittee on Transportation and Commerce,
Interstate and Foreign Commerce Committee,
Washington, D.C.

The subcommittee met at 2 p.m., pursuant to notice, in room 2218, Rayburn House Office Building, Hon. Fred B. Rooney, chairman, presiding.

Mr. Rooney. Our first witness today will be the Honorable Daniel O'Neal, Chairman, Interstate Commerce Commission, Washington, D.C.

For the benefit of the witnesses that will follow Mr. O'Neal I would appreciate it if you would summarize your statements within a 10-minute time period. Your statements will become a part of the record. You may proceed.

STATEMENT OF HON. A. DANIEL O'NEAL, CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY JANICE ROSENAK, DEPUTY DIRECTOR, SECTION OF RATES

Mr. O'Neal. Thank you. With me here is Janice Rosenak, who is the Deputy Director of the Section of Rates in the Commission.

I think we have adequately prepared for this in the short time allowed. I do have a very short statement I would like to run through.

The subject of these hearings today, as I understand it, is the rate situation in the Port of New York. And while I do not have a very lengthy prepared statement, I would like to make a few brief remarks, after which I will try and answer your specific questions.

The situation at the New York Port, to say the least, is complex. We are aware, for example, that there are many interests in different areas of the port including Brooklyn, New Jersey, and the developing complex at Howland Hook in Staten Island. We know that the rate situation in each of these areas is not always the same as that affecting the other areas.

Last fall I directed the Comimssion's Rail Services Planning Office to take an in-depth look into the entire port-equalization question. I was concerned then that the Commission's policies in this area might not be entirely clear, and I wanted better information on what the effect of those policies might be. The study is not directed exclusively, however, at the situation in New York. It will cover the entire question of inter-port equalization in the United States.

Mr. Rooney. Why do we always have to have studies around here?

Mr. O'NEAL. Well I don't know that we always have to have them but in this particular case——

Mr. ROONEY. But this particular case has existed for some time has it not?

Mr. O'NEAL. Well, let me tell you that the reason we decided a study made sense in this area now was because we have had generally a port equalization condition in the North Atlantic port area running from Norfolk to Portland for a long time. However, the issue has been presented a different way in the Texas port area. The Commission deviated from the standard that has applied in the North Atlantic port area and has taken a little different approach down in the Corpus Christi and other Texas port areas.

As the result of this decision it seemed like a good idea to take a look at the entire port equalization situation, the Commission's attitude toward it, how we happened to develop the pattern that exists in the North Atlantic ports today, and compare that with the condition among the other port groupings in the United States. So that is how we happened to initiate a study.

I like to avoid as many studies as possible, too, but sometimes you need them to understand where you are going and where you have been.

Anyway, we will look at the ports nationally but we will also look at intraport equalization in New York, which of course is the subject of primary concern here today. When the study is concluded, which I expect to occur sometime within the next few weeks, I will be in a better position to evaluate what steps the Commission might want to take.

Of course, we do know a number of things about the situation in New York. For example, we are aware of the large investments which are being put into the port facilities in Brooklyn and at Howland Hook in Staten Island. We also know that there has been a tremendous shift toward containerized traffic within the last few years, with a corresponding decline in break-bulk traffic, and that this has some implications for the intraport movements. We are further aware that not all rates into and out of the port apply equally to all areas, and that there are instances where in order to preserve equalization to the New York side of the port, lighterage services must be absorbed by the Brooklyn eastern district terminal, which is the terminal railroad on the Brooklyn side. We are also aware of the charges which have been made regarding Chessie's use of ConRail track between Park junction and Cranford junction and are looking into this situation as well.

Despite the importance of the issues before the subcommitte today, I should observe that there has not been much recent formal adjudicative action before the Commission regarding intraport equalization at New York. Of course, we don't rely solely on the complaints of others to get us to act—we don't construe our responsibilities that narrowly. However, when we receive complaints we do look into them—and they are likely to trigger action when they are filed with the Commission.

For example, in September of 1976 ConRail proposed a restriction that, in connection with certain commodities from New York, N.Y., the import rates would only apply from Port Newark-Elizabeth Port

Authority Marine Terminal, N.J. This restriction was subsequently deleted with regard to some of the commodities. The proposal was protested by the Port Authority of New York and New Jersey and other New York interests. Following suspension by the Commission and scheduling of an oral hearing, the proposal was canceled by ConRail and the proceeding was discontinued on April 22, 1977.

Of course, what we do in each case brought to our attention depends on the situation. However, the example I've just given shows that it's important for concerned groups to bring their grievances to us on a timely basis. We hope they will, since it does help us do the job.

That is the extent of my prepared comments. I will try to answer any questions you might have.

Mr. ROONEY. As you know, Mr. Chairman, we scheduled the hearing today because my colleague from New York has a great interest in this problem that I think is certainly one of inequity. And I will yield to the gentleman from New York.

Mr. MURPHY. Thank you, Mr. Chairman. Welcome to the committee, Mr. Chairman. We certainly appreciate your remarks. And we read with interest the newspaper reports of your opinions on ConRail and the effect of pouring another $1.4 billion into it and whether or not that would solve the problems. And that hasn't been lost on the committee.

You, of course, know that in 1963 was the Supreme Court decision on the equalization of rates on the Northeast coast from the Midwest. And that decision we thought, many people thought would probably correct an inequity that had existed. Unfortunately we now see that we have a problem with equalization of rates not just from the Midwest but in the 4–R Act where rates not only to a port were considered but the language of the law very clearly states that the rates within a port would be equalized.

And of course when we deal with the Port of New York, particularly here we have the problem of the New York side, obviously a further distance from most inland points; to the Brooklyn-Staten Island-Long Island Railroad areas; and the Jersey side of the port.

The law very clearly indicates that rates will be equalized within the ports. And yet we found ConRail admitting that they had filed old tariffs and had filed rates that were not equal within the ports, and then tried to lay it off on the ICC as being somehow the panacea for their—clearly I feel—violation of the law in filing those rates. Would you express yourself on that?

Mr. O'NEAL. Insofar as break bulk traffic is concerned there is a general equalization situation that exists in the intra-New York Port area. That situation, however, is not so clear when you move away from break bulk to TOFC and COFC traffic, containerized traffic, which has not been subject to any kind of an equalization order or decision. And since most of the traffic now out of those ports—about 80 percent—is containerized traffic, there is a large amount of traffic that probably is not subject to a firm ruling by the agency that it needs to be equalized.

Mr. MURPHY. Yes; but we are dealing with the 1976 act, the 4–R Act. We are dealing with traffic to the port. We are not dealing with TOFC, COFC, and break bulk individually and separately. We are dealing with the equalization of rates, rail rates, whether they are two containers on a flat car or whether they happen to be a freight car.

35-045—78——7

Mr. O'Neal. Well, the way we read the Act, it states this:

Nothing in the amendments made by this section shall be construed to affect the authority and the responsibility of the Commission to guarantee the equalization of rates within the same port.

And it is very clear what area you are talking about. However, the Commission does not read this section as a directive for the Commission to initiate on its own a decision that will equalize the rates within the port, within the New York Port for example, However, if a petition were filed that would trigger it, that might get things going.

But there is nothing in the act that the Commission reads as triggering an action by the Commission itself. The way I read it, it says that whatever is going on as far as equalization, nothing in this act was intended to disturb that. And I think that is a fair reading of what the statute says.

Mr. Murphy. Well, if ConRail had competition to New York and ConRail had filed a tariff, and say the Chessie had lines into New York, and they filed different tariffs, what is the purpose of the Commission? Is the Commission supposed to see that the tariffs are legal or aren't they supposed to see that the tariffs are legal?

Mr. O'Neal. Well, the way we normally work, you know, there are a number of tariffs filed with the Commission every day, thousands of them. There is a check made to make sure that tariff is properly drawn and that sort of thing; but there is not an automatic check by the Commission itself comparing the different tariffs, one with another. That could be determined but normally we would expect those who are affected by those tariffs to raise the issue with the Commission, which was done in this one example I gave you. And the Commission suspended that particular rate, didn't let it go into effect because it looked like it would disturb the port relationship.

Mr. Murphy. What you need then is someone to petition the Commission on this issue?

Mr. O'Neal. Well, I think we need to know that there is a lot of concern and it needs to be brought formally before the Commission. And it really hasn't happened.

Mr. Murphy. We very carefully studied this act and we battled through the Commerce Committee in both the House and the Senate, through the subcommittees and the full committees and on the floor. And this amendment came in on the full floor. And I am sure that the liason people of the Commission were listening to the debate and making every effort to understand what the intent of the Congress was.

And the competing interests sat in the conference committee while the Baltimore representatives were trying to throw this language out so that they could once again go back to a competitive rate advantage over the other Northeastern ports. And I am certain that the Commission must have known what the problem was, particularly where the Port of New York was concerned. This was very clearly brought out.

And now we have to bring a petition and the Commission doesn't have the responsibility to reject these rates and require an equalization in the port?

Mr. O'Neal. The Commission can do that. It can initiate action on its own, at least that is our reading of the act and the amendment that you placed in the act made that possible for these kinds of rates as opposed to others where we don't have the power to move on our own.

What I am saying is that we have not done so and we have not because our own review has not raised the issue and it has not been raised by parties before the Commission.

The amendment I think is significant in ways that gave a signal to the Commission that the Congress was concerned about anything in this act that would allow the railroads to disturb the relationships without the Commission having some authority to act. So what I am saying is that the amendment had significance to the Commission; it meant something to us. And I think we have acted in the one instance where the issue has really been presented. But it did not necessarily say to the Commission that it should itself initiate a port equalization review.

However, as I mentioned earlier in the testimony, I think before you came in, the Commission has initiated a study of port equalization, which I hope we will have before us within the next few weeks, which looks at the nationwide port situation and will also look at the intra-New York Port equalization situation.

Mr. MURPHY. If someone files a petition on this question of rates within a port, how long will it take the Commission to make a decision on that petition,

Mr. O'NEAL. Well, Mrs. Rosenak tells me probably 4 to 6 months would be required to make a decision.

Mr. MURPHY. Four to six months? What would that response be? Would it direct itself to the question of break bulk as well as TOFC and as well as COFC?

Mr. O'NEAL. Well, I think if it were properly framed, it should insure that the Commission is looking at both those questions. You wouldn't want the Commission to look only at break bulk, I don't think, because that is only 20 percent of the traffic right now.

Mr. MURPHY. What about the question of discrimination between ports?

Mr. O'NEAL. Well——

Mr. MURPHY. We just discussed the question of discrimination within a port. Now what about the problem between ports?

Mr. O'NEAL. There is a general port equalization condition that exists in the North Atlantic ports from Norfolk through Portland, Maine. That generally again applies to break bulk traffic and not necessarily TOFC and COFC traffic.

Mr. MURPHY. When did the Commission take the point of view that this affected break bulk traffic and not TOFC and COFC?

Mr. O'NEAL. The decisions were made on the basis of the kind of traffic that was moving at that time, and it was break bulk traffic. Since that time the rates that have been established for TOFC and COFC have been established on a mileage basis by the carriers. And frankly, there has not been that much complaint before the Commission. Therefore, the Commission has not moved in that area yet.

Mr. MURPHY. Well, is it your opinion then that we have got to go back to court in order to equalize rates on TOFC and COFC between the points in the Midwest to the Northeastern ports? We have an $81 plus discriminatory rates between Des Plaines, Ill. and the Port of Baltimore as it relates to the Ports of Philadelphia, New York, and Boston.

Mr. O'NEAL. I think we feel that we have the authority without a special court decision at this time, as long as there is a complaint or a proper protest to a rate that has been filed. But of course, you know, the thing could go to court. No question about that. But we are not saying that we need to go to court ourselves to obtain the authority. We feel we have the authority.

Mr. MURPHY. It took 10 years last time. It is going to go through another 10-year exercise in order to equalize what we felt had been taken care of as a discriminatory practice in the past?

Mr. O'NEAL. No, I would hope not. Again, I can't say which way the commission would come out on this thing, but I would hope we could make a decision a lot sooner than 10 years.

Mr. MURPHY. It is within the power of the Commission to do it without going to court?

Mr. O'NEAL. Yes, I think so.

Mr. MURPHY. And then it may go to court?

Mr. O'NEAL. Then it may go to court and it could go on for a while.

Mr. MURPHY. Mr. Chairman, I have no other questions. I do have some written questions for the Chairman, which I will propose to him separately for the record.

Mr. ROONEY. Mr. Florio.

Mr. FLORIO. I have no questions.

Mr. ROONEY. Ms. Mikulski.

Ms. MIKULSKI. Mr. Chairman, was there testimony submitted by Mr. O'Neal?

Mr. O'NEAL. We have a very short statement that I submitted.

Ms. MIKULSKI. Well, I would like to have a copy of that statement and to, if I may, submit some written questions to Mr. O'Neal. But I do have just a question or two. Mr. O'Neal, is the ICC preparing a study on the issue of rate equalization in regard to New York and other North Atlantic ports?

Mr. O'NEAL. Yes.

Ms. MIKULSKI. Could you elaborate on what its purpose and timetables are? Excuse me, I have an ear infection. I would appreciate it if you would speak up.

Mr. O'NEAL. OK. That is discussed somewhat in the prepared statement that we delivered to the committee. Basically what we are doing is, as the result of some cases that have developed in the Texas port area where the Commission has made a decision affecting the relationships of those ports, we decided that it would be a wise thing to take a look at the situation in the North Atlantic port area because those relationships are somewhat different than what has been established for the Texas port area.

So we initiated a study last fall which will look at the port equalization of the various groups of ports around the country. It will also look at the intra-port situation in the New York area.

Ms. MIKULSKI. Is that the New York-New Jersey situation?

Mr. O'NEAL. Right. We hope to have that report within the next several weeks. And at that time, as I was telling the chairman, I think we will be in a little better position to comment on some of the specific issues.

Ms. Mikulski. Mr. O'Neal, when you say the next several weeks, are we talking about May, June, July? Could you have a more specific timetable?

Mr. O'Neal. Probably the first week in June.

Ms. Mikulski. The first week in June. Do you think that this study is so imminent that it would be more appropriate if we deferred action on this type of matter until your study was done in view of the impact of any changes we might make?

Mr. O'Neal. I think as far as the Commission is concerned we would want to take a look at this study before we act, although if there is a petition filed, that is a different matter.

I think it could be a helpful document just to get a fix on this whole problem of port equalization, which can be very complex.

Mr. Florio. If the lady would yield on that?

Ms. Mikulski. Yes.

Mr. Florio. I think what is being referred to is you think that rather than legislative action which may be contemplated by the members, that it would be appropriate to defer to the Commission until it gets its study, in the hopes that it might take either administrative action or might suggest the need for legislative action?

Mr. O'Neal. Well, I think that probably would be the more prudent course. I think the Commission probably can do some things—and again, I don't want to prejudge where the Commission might come out on this sort of thing. But I think there probably is adequate remedy right now administratively, unless the Congress wants to go so far as to legislate a solution, which I think would be very difficult at any rate in this very complex area. So, yes, I guess that is——

Mr. Murphy. Would the gentleman yield? The legislated solution is equalization between ports and within ports. That was the legislated solution. Clearly. With a clear intent.

Mr. O'Neal. Well, I think, as I have said before, as far as the 4–R Act was concerned, the directive to the Commission was that we should do nothing to disturb the existing relationships or equalizations as the result of this act. In other words, nothing in this act should induce us to do anything differently than would have occurred otherwise.

Mr. Murphy. Whether those tariffs are legal or not?

Just because ConRail filed Penny's tariffs, understanding what the problem was, I don't think the Commission should have asked them when there were inequities in them that clearly violated the intent of the 4–R Act.

Mr. O'Neal. Well, as I say, I think there is a difference of opinion as to just what the Commission is directed to do by this statute. And I think, you know, again, I think we are reading it as not being a directive to the Commission to actually go out and initiate an equalization either intraport New York or in any port group.

And I guess one reason I would say that is because there are a number of port groupings around the Nation where port equalization does not exist, but there are different kinds of relationships: the relationships are not equalized but they are relationships that have grown up, and the Commission has to protect.

Mr. MURPHY. We are not talking about other ports. We are talking about a port. And the Commission has defined commercial zones around each of the ports. There is a long historical basis that the Commission has laid out for defining what a port is. And that is why we said "within a port." We are not talking about groupings of ports.

Mr. O'NEAL. OK.

Ms. MIKULSKI. Excuse me, it is still my time. I would like to claim it back. The gentleman from New York and I are going to have substantial differences on this for obvious reasons.

Let me ask you a question. Aren't rate matters such as we are talking about today normally the internal function of ICC?

Don't you ordinarily deal with this through your rate structure proceedings?

Mr. O'NEAL. Yes; normally what happens is a carrier files a rate. And there are several thousand rates filed every day. The Commission does review the rates to make sure they are published in the proper form. There is a review made to determine whether some orders of the Commission are being violated in some way. But there is not necessarily a review done of the relationships between different rates. That can be picked up sometimes, and it is.

Ms. MIKULSKI. But isn't that what your study is then doing?

Mr. O'NEAL. Well, the study will look at the overall picture of rates to and from ports and the relationships between ports.

Ms. MIKULSKI. You know, Mr. O'Neal, you are the first bureaucrat that I have heard testify who wasn't fighting for the prerogatives of his agency. Ordinarily they do. Your deference to the legislative process here is somewhat surprising. Because it is my understanding that the role and function of the ICC is that the equalization of rates and the whole rate structure itself was meant to be handled by a regulatory agency with the process so instituted. Legislation was merely to establish an intent, a thrust; not to get into the nitty-gritty of the establishment of rate formulas.

Now, am I incorrect or aren't you defending your own agency?

Mr. O'NEAL. I am trying not to defend the agency or anything. What I am trying to do is just state it the way I see it. And generally speaking, of course, the way the Congress has legislated the regulation of rates, it has laid out a general standard, and the Commission is bound to follow that standard as best it can.

Ms. MIKULSKI. Thank you, Mr. Chairman. I have no further questions.

Mr. ROONEY. The gentleman from Illinois.

Mr. RUSSO. I am sorry I am a little bit late but I certainly am concerned about the changing of rates, the equalization, this rate change that we are talking about and how it is going to affect certain areas of the country. I was wondering if there is any particular reason that there would be a problem keeping the rates the way they are today, especially if you take into consideration the Baltimore area, which is very close to the heart of the gentlelady from Baltimore.

Mr. O'NEAL. Well, in keeping the relationships of these ports the same as they are today, we are in the process right now of studying the whole scene as far as rate relationships are concerned between the various ports. And our position has got to be I think we want to take a look at that study and see what adjustments should be made.

Mr. RUSSO. How long will it take for the study?

Mr. O'NEAL. The first of June I hope. The first week in June.

Mr. RUSSO. I have no further questions.

Mr. ROONEY. Thank you very much, Mr. Chairman. We appreciate your appearance today.

Mr. O'NEAL. Thank you.

Mr. ROONEY. Our next witness will be Mr. James A. Hagen, senior vice president, marketing and sales, Consolidated Rail Corp., otherwise known as ConRail.

You may proceed, Mr. Hagen. For the benefit of the record, I would appreciate it very much if you would introduce your colleagues.

STATEMENT OF JAMES A. HAGEN, SENIOR VICE PRESIDENT, MARKETING AND SALES, CONSOLIDATED RAIL CORP., ACCOMPANIED BY RICHARD J. MURPHY, SENIOR COMMERCE COUNSEL, JOHN L. SWEENEY, VICE PRESIDENT, GOVERNMENT AFFAIRS, AND JAMES E. MUSSLEWHITE, ASSISTANT VICE PRESIDENT, PRICING

Mr. HAGEN. All right. I have with me, Mr. Chairman, Mr. Richard J. Murphy, senior commerce counsel; Mr. John L. Sweeney, vice president, government affairs, and Mr. James E. Musslewhite, assistant vice president, pricing.

Mr. Chairman, it is a pleasure to be here today. And because of my familiarity with the ConRail marketing practices Mr. Jordan has asked me to appear in this matter. We are glad you are taking such an acute interest in our North Atlantic rate practices and we have attempted to answer these questions you proposed in your April 12 letter to Mr. Jordan. And with your permission, I would submit those answers for the record, which are attached to my statement.

Mr. ROONEY. Without objection.

Mr. HAGEN. And I am ready to answer any questions you might have, but if I may, I have a short statement generally outlining the position on the issues you have raised in your letters.

As I understand it, we are concerned with four basic issues. The first issue is whether or not ConRail's rate publications maintains the same rate to all points within the Port of New York. The second is whether ConRail competes with the Chessie system on traffic moving to and from the Port of New York. The third issue is what rate levels ConRail maintains to and from the North Atlantic ports. The final issue, as I understand it, is whether ConRail is willing to establish joint rates via all-rail routes to stations in Brooklyn in lieu of water routes via the Greenville Pier.

Our brief answers to these questions, and we will explain these in some detail and did so in the questions, we do maintain rate parity among all points within the Port of New York served by ConRail. And we will deal with that a little later. And second, we presently compete with the Chessie in the New York area.

And third, the rate relationships maintained by ConRail, as among the North Atlantic ports, vary because of competitive factors. ConRail is willing to attempt to establish rate relations which are beneficial to all of its shippers, and to the extent that they promote the goals of the 4-R Act of establishing and maintaining a for-profit railroad in the Northeast.

And finally, we are willing to interchange traffic with the New York Dock Railway and BEDT on the same basis as the Long Island Railroad, or, with respect to traffic which we do not interchange with the LI, on a basis that will not reduce the contribution of the traffic to ConRail.

It is my understanding that you are concerned that ConRail has adopted ratemaking practices which you believe violate the provisions of the Interstate Commerce Act as they were reaffirmed by Mr. Murphy's amendment to the 4-R Act. Accompanying me is Richard J. Murphy, senior commerce counsel to ConRail, who is familiar with the practice before the ICC and the provisions of the Interstate Commerce Act governing the establishment of rate relationships between and within ports. Mr. Murphy's experience with these matters, both prior to and subsequent to establishment of ConRail, qualified him to comment as an expert upon the ratemaking practices of ConRail and its predecesor railroads. He will now, with your permission, explain, ConRail's ratemaking practices with respect to the maintenance of port relationships do not differ from those of our predecessor carriers. These practices were lawful under the terms of the Interstate Commerce Act. Since neither the practice nor the Interstate Commerce Act has changed since these practices were initially instituted, we have no reasons to believe that we are now in less compliance with the law than we were with the predecessor railroads.

[Attachments to Mr. Hagen's prepared statement follow:]

RESPONSE OF CONSOLIDATED RAIL CORPORATION TO QUESTIONS OF THE HONORABLE JOHN M. MURPHY CONCERNING CONRAIL'S RATEMAKING POLICIES WITH RESPECT TO THE NORTH ATLANTIC PORTS

1. Are you aware that rail freight rate parity has existed historically throughout the Port and City of New York as a single economic entity?

a. Prior to the early 1960's, the import-export rate tariffs on rail carload traffic to the Port of New York treated all stations within the Port, including all of the City of New York, as a single rate group. Commencing about 1963, some rail rates on import-export rail carload traffic through the Port of New York were established to New Jersey stations which were lower than rates to other stations within the Port of New York. This condition continued until ConRail commenced operations, when Conrail voluntarily restored rate parity on rail carload traffic within the Port.

b. TOFC rates on Plan II½ traffic, which requires the shipper or receiver to perform the service of moving his trailer to and from railroad TOFC terminals, are rates which apply only for ramp to ramp transportation. The TOFC rates applicable on this type of movement have been the same to all of the Conrail ramps located within the Port of New York. Prior to establishment of the Plan II½ ramp to ramp rates, the Plan III rate application on shipper-supplied trailers likewise required shippers to be responsible for movement of the trailer to and from the railroad TOFC terminal. These Plan II½ or Plan III rates have been in effect since about 1961. There have never been railroad ramps for TOFC service in Brooklyn.

2. Has Conrail adopted or established tariffs to and/or from New Jersey points in the Port of New York which are lower than its tariffs to and/or from New York points in the Port?

a. No as to carload traffic.

b. For TOFC traffic, the only ramps Conrail has are in New Jersey.

3. Has Conrail adopted or established tariffs to and/or from New Jersey points in the Port of New York which do not include points in the New York part of the Port?

a. No as to carload traffic.

b. Yes as to TOFC traffic. Conrail does not have TOFC terminals except on the New Jersey side, and therefore in publishing Plan II½ and Plan III TOFC rates, which apply only on traffic which requires the shipper to move the trailer to or from the ramp, do not apply to points in the New York harbor which are not served by Conrail.

4. Has ConRail ever tried to do so?

As to boxcar and TOFC rates, Conrail has never attempted to discriminate between points it serves with the port, and it maintains equalized rates to all such points.

5. If so, does Conrail in such cases require an additional charge where cargo is destined to or from New York points within the Port?

(a) From Conrail's yards in New Jersey to its facility at Greenvile? If so, how much?

(b) From Conrail's yards in New Jersey to its facility at Cranford Junction? If so, how much?

(c) Any others? If so, how much?

Not for carload traffic.

With respect to trailer and container traffic, Conrail does not require additional charge where cargo is destined to New York points served by Conrail within the Port. Conrail's tariff rates for TOFC and container traffic apply from TOFC ramp to TOFC ramp. It is the shipper's or receiver's obligation to arange and pay for delivery or pick-up of the trailers at Conrail ramps. Some of the shippers are located very close to those Conrail TOFC terminals and thus incur very low drayage charges, while other shippers are located some distance from those terminals and consequently incur greater drayage charges. In no instance does Conrail impose a surcharge on shippers.

Conrail does publish an optional delivery charge from the North Jersey ramps at Croxton, North Bergen, Kearny and Portside to Port Elizabeth, Port Newark and Port Jersey. This optional $44.21 charge applies if the shipper requests that Conrail make the trailer or container delivery from the ramp. If the shipper elects to make other transportation arrangements, this optional charge does not apply.

Conrail's optional charge is a pass-through of the charges paid by Conrail to the carrier providing the drayage service for Conrail on a contract basis. Conrail does not provide this service except as a means of consolidating intermodal transportation costs for the convenience of the shipper. Conrail, with the concurrence of the Port of New York Authority, has filed a proposal to cancel the optional charge.

6. If Conrail requires such a surcharge for local service within the Port of New York, does it impose a similar surcharge in the other ports which it serves?

(a) The concept is not applicable to carload traffic.

(b) Conrail does provide optional delivery service described above at the Port of New York. Conrail does not have a separate charge for service beyond its ramp on Plan II½ and III service at ports other than New York. Conrail provides the following service at the following ports:

(i) *Boston—ramp to ramp.*—No provision for service beyond the ramps specified in the Tariffs.

(ii) New York—see above.

(iii) *Philadelphia—ramp to ramp.*—No provision for service beyond the ramps specified in the Tariffs.

(iv) *Baltimore—ramp to ramp.*—No provision for service beyond the ramps specified in the Tariffs.

7. Has Conrail adopted or established tariffs limited to New York points in the Port which are served by Conrail and the Long Island Railroad?

Yes. Conrail has established two tariffs on domestic boxcar traffic to points in the ports which are served by Conrail and LIRR.

8. If so, is not the practical effect of such tariffs to exclude all other New York points and the railroads which serve them?

Yes. The practical effect of these tariffs is to exclude all other New York rate points and the railroads who serve them on the limited movements under these two tariffs. One tariff applies on Newsprint from Baiecomeau, Quebec to Harlem River, N.Y., which is local to Conrail. It is a competitive rate established to a warehouseman who delivers the newsprint to one of the New York papers. As this movement will only be to that one station, there was no reason to extend to other points in New York City. The other tariff applies on Orange Concentrate from several Florida origins to Garden City-Mineola, N.Y., which is on the LIRR. A per car rate was established to this destination to meet intermodal competition.

Other rates on orange concentrate from Florida to New York City apply to other Conrail destinations, as well as to destinations on the Brooklyn Eastern District Terminal and New York Dock Railway.

9. On what conditions would Conrail continue the operating rights which the Chessie System has had in the past into the Port of New York between Park Junction and Cranford Junction to connect with the Staten Island Rail Corporation and Howland Hook?

To our knowledge, any operating rights which Chessie has had in the past into the Port of New York via the line between Park Junction, Pa. and Cranford Junction, N.J. to connect with the Staten Island Rail Corporation and Howland Hook still exist and are presently being exercised.

10. What difference would it make to Conrail if the Chessie System became a competitor in the Port of New York?

Chessie System now competes with Conrail in the Port of New York.

11. Does break-bulk traffic generally to and from North Atlantic ports in the region served by Conrail move at equal rates?

By break-bulk traffic we assume you mean boxcar traffic. Conrail rates to and from all North Atlantic ports on that traffic are equalized from the territory which generally lies west of Pittsburgh. Short-haul rates are not equalized.

12. Does container traffic generally to and from North Atlantic ports in the region served by Conrail move at equal rates?

Container rates to and from North Atlantic ports are not equalized. New York has a rate advantage on the volume movement from Chicago and St. Louis, in that the 60-trailer rates published to New York are lower than any rates available to Baltimore or Boston. The single and 2-trailer rate structure is based on highway mileage between ports and inland points and therefore, like the motor carrier rates which they were established to meet, are not equalized.

TOFC and container traffic which moves on 10 and 30-trailer rates are the same to the ports of New York, Philadelphia and Baltimore. This is because the Chessie have not chosen to publish lower rates to Philadelphia and Baltimore than to New York.

Neither Conrail nor the Port of New York would benefit from equalization of single or double trailer rates. If Conrail were to attempt to equalize rates between New York and Baltimore by raising rates to the New York level, Conrail would be likely to lose the traffic to C&O and trucks serving Baltimore, and New York volume would not increase. If Conrail were to attempt to equalize rates by lowering rates to the Baltimore level, Conrail's revenue would decrease, and it is almost certain that the Chessie System, to protect its volume in Baltimore, would lower its rates to preserve the differential. Thus New York's volume would not increase as a result of attempted equalization.

Because TOFC traffic makes only a marginal contribution over long-term variable cost, this is not a rate structure on which we could engage iu a rate war without producing non-compensatory rates.

13. What proportion does suc hcontainer traffic represent out of the total traffic handled by Conrail to and from the North Atlantic ports it serves?

This information could not be developed in time for this hearing. We would appreciate an opportunity to supplement this statement by filing the statistics requested.

14. What are the rate dierences, by ports, if any, on container traffic to and from in and points and the North Atlantic ports which Conrail serves?

Chicago and E. St. Louis are major TOFC terminals and interchange points. Attached is a statement of Plan II½ rates to North Atlantic ports from these points. We will be pleased to provide further examples upon request.

15. Are you aware that New York State has already committed $9.9 million for the initial phase of rehabilitating rail facilities on the Brooklyn waterfront?

Yes. However, these funds are exclusively committed to improving the facilities of railroads other than Conrail.

16. On what terms would Conrail be prepared to establish joint rates, routes and tariffs with the New York terminal railways (New York Dock Railway and Brooklyn Eastern District Terminal) to and from points in route via Conrail's Bay Ridge line?

a. Conrail presently interchanges boxcar traffic with LIRR at Fresh Pond Junction, which is inthe same general vicinity as an interchange between Conrail and New York Dock Railway or Brooklyn Eastern District Terminal via the Bay Ridge line. Therefore, we would provide a divisional basis for those lines similar to what we would provide for the LIRR.

b. We do not interchange TOFC traffic in the New York area. Conrail would be willing to establish, to the extent physically possible, such an interchange under conditions that would maintain or enhance the contribution of the traffic to Conrail.

COMPARISON OF PLAN II½ [1] TOFC RATES (EX PARTE 343 LEVEL)

	Group 2 single trailer rete [2] (M/W 40,000 lb)	2 treiler rate (M/W 80,000 lb)	10-trailer rate [3]	30-trailer		60-trailer	
				Rete	Return rete	Rate	Return rete
Between Chicago, Ill. end:							
Baltimore, Md	$605	$981	$440	$485	$373		
New Jersey ramps	677	1,097	440	485	373	$479	$365
Philadelphia, Pe	624	1,011	440	485	373	479	365
Boston, Mass	743	1,190	554				
Between Eest St. Louis, Ill. and:							
Baltimore, Md	670	1,085	533				
New Jersey remps	774	1,254	533			579	452
Philadelphie, Pa	721	1,157	533			[4] 579	[4] 452
Boston, Mass	884	1,428				650	518

[1] Plan II½—Remp-to-ramp rates, epplying on freight all kinds, loaded in or on trailers furnished by carriers.
[2] Published in ConRail Teriff 26700–H, ICC 93.
[3] Published in ConRail Tarlff 26705–G, ICC 120.
[4] Intermediate to New York.

Mr. Hagen. Would you like to have Mr. Murphy's statement?

Mr. Rooney. You may proceed.

STATEMENT OF RICHARD J. MURPHY

Mr. Richard Murphy. Thank you, Congressman. I have prepared a statement which has been distributed. It has been my privilege to practice before the Interstate Commerce Commission for most of my professional career. In fact, I was lead counsel for the New York railroads back in 1953 in the *Iron Ore Rate* case, which was the lead case in establishing port parity that came into existence about 10 years later, as you mentioned, Congressman Murphy. So for that reason I have had a great interest and some familiarity with the import-export rate structure and the law that relates to that rate strucure.

There are two legal issues that I considered that I saw as being presented in the questions that were addressed to ConRail. The first issue, as I understood it, was the issue dealing with the relationships of the rates to and from the Port of New York versus the rates to and from the Ports of Baltimore or Philadelphia, the port rate structure relationship.

That rate structure was one which, going back probably from the beginning of time until about 1963, provided for differentially related rates: with the rates to New York being over the rates to Philadelphia, and the rates to Philadelphia in turn being higher than the rates to Baltimore.

In the litigation that commenced in 1953 and which concluded in 1963, the New York railroads were successful in obtaining Commission approval of rates which were published from New York, which did bring about an equalization of the rates between those ports and the Midwestern territory generally west of the Buffalo-Pittsburgh line.

Now, that was a rate change that came about because the New York lines had filed rates which proposed such equalization. Previously, there had been efforts by New York interests to bring about that equalization, which efforts were made in complaint cases filed in the Commission which sought a Commission order prescribing parity. The Commission refused to prescribe that parity. But when the railroads moved forward affirmatively to put it in, the Commission allowed it. But the Commission at no time has ever made a finding that parity is required as a matter of law.

And it would seem to me that before the Commission could prescribe parity, they would have to make such a finding. I believe that in the world everything doesn't have to be precisely equal, and there is a range here where in view of the shorter distances to the Port of Baltimore than to New York, the railroads would be in a position to defend a different level of rates.

Now, as Mr. Hagen's rate testimony shows, the rates on the boxcar or carload traffic are equalized. In fact, ConRail took steps after it commenced operations, Mr. Chairman, to equalize some boxcars which were not equalized previously, immediately prior to their commencing operations.

The second aspect of the rate structure which has been presented by the questions posed here and by the discussion is a question of whether or not as a matter of law the rate grouping within the port must be maintained as a single uniform rate to and from all points within New York Harbor, which is the points that we are talking about. For many years the port has been treated as one rate point; in effect, almost as one station of the railroad. And the export-import traffic brought to the New Jersey railheads was taken across as the railroad's expense by lighter to Brooklyn and Staten Island and Manhattan without any additional charges.

That practice was one that was voluntarily established by the railroads. My research does not indicate that that practice ever was prescribed or required by the Interstate Commerce Commission under the Interstate Commerce Act.

A few years ago there was a trend away from that requirement. I suppose when you are dealing with railroads in the Northeast which are no longer operational; in the days of the Vanderbilts, they had to have money to keep going. And that practice was broken to some extent. Back in 1972, in a case entitled *Charges at New York Harbor, Penn Central Transportation Co.*, reported at 344 I.C.C. 21, the Commission permitted the publication of lighterage charges from the New Jersey railheads for application, on traffic moved over to Brooklyn or Manhattan or wherever. And that lighterage charge applied on import-export traffic.

Another point that I would like to mention is the fact that in August of 1972, the Interstate Commerce Commission held that TOFC rates and container rates need not reflect the rate structure on import-export traffic.

So. while it is true that ConRail maintains a uniform rate to or from the Port of New York on the carload traffic, it maintains a uniform rate to all of the TOFC and container terminals it serves in that New York Harbor. Of course only it doesn't get across the Hudson River and its rates apply to and from those ramps. I believe that that is consistent with the Commission's finding in 1972 that TOFC rates need not conform to the standards of the boxcar traffic and also that it is consistent with the Commission's actions in the lighterage case.

So maybe I am the guilty party as I have told Mr. Hagen that in my opinion the rate structure is consistent with and in conformance with the law as it was announced by the Commission in cases prior to the 4R Act amendment.

I did review the 4R Act to determine whether or not there was any change made in the basic law dealing with port structures in the 4R Act. Actually the real law that is involved is relationships' law that come out of section 2 of the act and section 3 of the act, the relationships section to the Interstate Commerce Act. And I looked at the 4R Act. Section 202 is the section of the act by which you amended and modernized the ratemaking provisions of the Interstate Commerce Act. Section 202(F) contains the conference committee version of Congressman Murphy's amendment.

And as I read that, it says that nothing in the ratemaking amendments shall be construed—and I am skipping some things—to affect the existing law or the authority of the Commission with respect to rate relationships between ports or to affect the authority and responsibility of the Commission to guarantee the qualization of rates within the same port.

And this to me, reading it as a lawyer who was not privy to any of the actions or considerations of your committees, but it just says to me that when we changed the law, we didn't change the law with respect to the port rates. And so I, as a lawyer, read it as saying that the law remains as it was as I described in these recent cases.

Mr. MURPHY. Thank you, Mr. Murphy. And Mr. Hagen, you tell Mr. Jordon we certainly appreciate his response to those questions. They generally deal with broad issues. I want to ask you a few specific questions. And anybody can respond to the questions.

Mr. ROONEY. I might say that Mr. Ottinger, who is a member of the full committee and not of the subcommittee, will submit for the record some additional questions which I would appreciate very much your responding to.

[The information requested was not available to the subcommittee at the time of printing:]

Mr. ROONEY. And Mr. Murphy, your statement will be made a part of the record also.

[Mr. Richard J. Murphy's prepared statement follows:]

STATEMENT OF RICHARD J. MURPHY, SENIOR COMMERCE COUNSEL, CONSOLIDATED RAIL CORPORATION

It is a pleasure to have the opportunity to express my views in respect to Conrail's rates on import-export traffic to and from the Port of New York.

It has been my privilege to practice before the Interstate Commerce Commission throughout most of my professional career, and during that time I have been interested in the legal aspects of the North Atlantic Ports rate structure. In fact, I was lead counsel for the New York railroads in 1953 when those railroads filed tariffs to equalize the rates on iron ore from New York to destinations in Ohio and Western Pennsylvania with the rates from Philadelphia and Baltimore.

If I may, I would like to direct my remarks to two aspects of the law with respect to import-export rates, the first being the late relationship between ports and the second being the rate relationship within the same port.

As to the first, it is my opinion that the Interstate Commerce Act permits equalization of import-export rates within reasonable limits, but does not require that rail rates ignore differences in distance and cost. I consider this to be borne out by the litigation through which the North Atlantic rate structure on carload shipments evolved.

At least as far back as 1877, the import-export rail rates between Atlantic ports (Baltimore, Philadelphia and New York) and the territory west of a line through Buffalo, New York and Pittsburgh reflected a rate structure in which the New York rates were higher than the Philadelphia rates, which, in turn, were higher than the Baltimore rates. In 1953, the New York railroads moved to equalize New York iron ore rates with the Baltimore rates. After litigation which was finally concluded in 1964, the New York railroads were permitted to equalize iron ore rates over the objection of the Ports of Philadelphia and Baltimore. *Iron Ore from Eastern Ports to C.F.A. Points*, 321 ICC 473, 490 (1964).

After initial success in the *Iron Ore Rate Case*, the New York railroads, with the support of the Port of New York Authority and New York City interests, embarked on a program to equalize import-import rates on all other rail carload traffic between the North Atlantic Ports and the above-described territory. That program was successful. See *Boston and Maine Railroad v. United States*, 202 F. Supp. 830 (1962), aff'd. 373 U.S. 372 (1963).

In the litigation in which the New York lines were successful in establishing rates equal to those from Baltimore, the New York lines voluntarily published equalized rates.

The second aspect of the rate structure which I have considered is the rate grouping within the Port of New York. The legal question is whether the Interstate Commerce Act requires that all points in New York Harbor be given the same rates on import-export traffic. For many years the Port of New York was treated as one rate group. Export-import traffic brought to New Jersey railheads was lightered from New Jersey to dock facilities in Manhattan, Brooklyn and other points in the harbor for loading into overseas ships. The costs of moving beyond New Jersey were ignored. This rate practice was not required by the Interstate Commerce Commission. It was voluntarily established by the railroads. When it was assailed several times by New Jersey interests who sought rates in keeping with a claimed geographical advantage, the Commission did not require that the rate grouping be broken. However, a few years ago the Commission permitted publication of lighterage charges within New York Harbor on overseas carload shipments. This had the effect of making the transportation charges on lightered carload traffic greater to overseas docks in Brooklyn than to docks in New Jersey. The Commission case. *Charges at New York Harbor, Penn Central Transp. Co.*, 344 ICC 21, was decided in 1972.

From my reading of Mr. Hagan's statement, it does not appear that there is any controversy about Conrail's rate practices on carload traffic. I am of the opinion that the Plan II–½ and Plan III flatcar rates which apply to ConRail terminals in the Port of New York are lawful. I do not know of any legal requirement that would require Conrail to equalize the drayage cost between those terminals and all port facilities in New York Harbor.

Prior litigation in respect to that rate structure had involved shipper complaints to force the New York rates down. The Commission had dismissed those complaints, holding that rate differences were not shown to be unlawful. As a practical matter, there is a distinction between the Commission's role in reviewing a railroad's proposed rate change and its role in prescribing a rate change in a complaint case. When the New York railroads proposed equalization, the Commission merely had to find that the proposed rates were unlawful—it did not have to find that the rate differences were unlawful. However, if the Commission were to prescribe rate parity, it would be necessary for it to find that the differential basis was unlawful and that differences in distances to and from the ports must be ignored. The Commission has never made such a finding in respect to the North Atlantic rate structure. Based on that understanding of the law, it is my opinion that Conrail's import-export rates on carload and on trailer or container-on-flat car shipments to and from the North Atlantic ports—as described by Mr. Hagen—are lawful under the Interstate Commerce Act.

To me the lighterage case supports this view. Moreover, in August, 1972, the Interstate Commerce Commission held that the trailer and container-on-flat-car rates need not reflect the rate structure on import-export traffic. *Petition for Investigation of Railroad Freight Rate Structure between U.S. North Atlantic Ports & Central Territory*, ICC Docket No. 35475.

I have reviewed the provisions of the Railroad Revitalization and Regulatory Reform Act of 1976 to determine whether the law as I understand it and as I have stated it here was changed by that Act. As I read it. Section 202(f) specifically provides that the 4R Act makes no changes. It provides:

"(f) Nothing in the amendments made by this section shall be construed—

(1) to modify the application of section 2, 3, or 4 of the Interstate Commerce Act (49 USC 2, 3, or 4) in determining the lawfulness of any rate or practice;

(2) to make lawful any competitive practice which is unfair, destructive, predatory, or other wise undermines competition which is necessary in the public interest;

(3) to affect the existing law or the authority of the Commission with respect to rate relationships between ports; or

(4) to affect the authority and responsibility of the Commission to guarantee the equalization of rates within the same port."

In summary, it is my opinion that Conrail's rates on import-export traffic to the Port of New York, which for almost all practical purposes are the

In summary, it is my opinion that Conrail's rates on import-export traffic to the Port of New York, which for almost all practical purposes are the rates of the bankrupt railroads which were adopted by Conrail, are in compliance with the Interstate Commerce Act.

I appreciate the opportunity to present this statement.

Mr. MURPHY. On April 1, 1976, did ConRail cease all rail-marine service in the Port of New York formerly provided by the bankrupt carriers?

Mr. HAGEN. Mr. Musslewhite will respond.

Mr. MURPHY. Did the New York Dock Railway and the Brooklyn Eastern District Terminal then undertake to provide that service by extending that service portwide?

Mr. MUSSLEWHITE. As I remember, sir, they continued their previous operations, which would give them authority to go over to their own docks. I believe they also extended and put in some lighterage service.

Mr. MURPHY. Then did BEDT operate ConRail's yard at Greenville under contract with ConRail?

Mr. MUSSLEWHITE. Yes.

Mr. MURPHY. Shortly after the conveyance date didn't ConRail announce it would adopt all joint rules, rates, and tariffs of its predecessors with connecting lines except for the Long Island Railroad, New York Dock Railroad, and Brooklyn Eastern District Terminal?

Mr. MUSSLEWHITE. We adopted all the rates to those terminals.

Mr. MURPHY. All joint routes, rates, and tariffs of the predecessor?

Mr. MUSSLEWHITE. Yes, sir, we adopted the rates, not exclusive, but to those terminals.

Mr. MURPHY. To Long Island Railroad, New York Dock, and BEDT?

Mr. MUSSLEWHITE. Yes, sir.

Mr. MURPHY. I think you may have done it to Long Island Railroad but not New York dock or BEDT.

Mr. MUSSLEWHITE. Eastern railroads issued what we call a determination advice on February 2, 1977. And this is in accordance with our independent announcement. It reads:

Rates or routes on export or import traffic, tariffs making Reference to this tariff, published to apply in connection with the Brooklyn Eastern District Terminal or New York Dock Railway and ConRail via former EL open prepaid station number 77, New York Lighterage Station-New Jersey; former Erie Lackawanna Prepaid Station Number 79 Jersey City, New Jersey; or former Lehigh Valley Open Prepaid Station 16 Jersey City Terminal, New Jersey will apply via ConRail Open Prepaid Station No. 181 Greenville Pier, Jersey City, New Jersey.

This is what I had reference to.

Mr. MURPHY. Did ConRail file a series of tariffs providing lower tariffs to its terminals in New Jersey than to points in the New York part of the port?

Mr. MUSSLEWHITE. There were some filed right after April 1, which we withdrew.

Mr. MURPHY. So that there are no existing tariffs with higher rates or surcharges than on the BEDT, New York Dock or the Staten Island Rail Corp. areas, Mr. Musslewhite, that are higher than the charged to New Jersey?

Mr. MUSSLEWHITE. We are speaking of carload only? Of break-bulk carload?

Mr. MURPHY. We are speaking of all tariffs, all trade. You can break it down by trailer and flat car or container or break-bulk.

Mr. MUSSLEWHITE. We do not have trailer on flatcar rates to the New York dock or BEDT. As far as carload is concerned, to the best of my knowledge they are all equalized. There may be some other rates. We have still 582 tariffs of our own and the association issues another 400 some odd tariffs. So I couldn't guarantee every one of them been corrected, but everyone that we have found we have corrected.

Mr. MURPHY. What is ConRail's present policy with regard to rate parity within the Port of New York?

Mr. HAGEN. Well, we maintain it, of course, under the break-bulk or the carload provision on the line approximately west of Pittsburgh.

Mr. MURPHY. Well, I have the impression that in order to move a container from the Midwest, that would come into the Kearney yard of ConRail and then to move it over to BEDT or New York Dock Railroad, that there is a surcharge where there is not to Port Elizabeth and Port Newark?

Mr. HAGEN. On TOFC traffic the only rates we have published are to our physical ramps. And we don't provide a service beyond that ourselves. We terminate trailers at these points. And the rates are set up to be a point to point rate from a ramp to ramp, and we don't provide service beyond.

Mr. MURPHY. In other words then there are surcharges to the rate from the Midwest to the Port of New York that discriminate against the eastern side of the port?

Mr. HAGEN. We don't feel that it discriminates. In fact, we don't charge for the movement. A contractor can take it over there. But these rates are cost-related rates. And the only costs that are provided for in the service is the ramping in an area like the Midwest and the deramping, or to take it off the car, in the New York area; and that is a frill-free rate, all that is provided is just that basic transportation between those two points.

Mr. MURPHY. That doesn't square with testimony we had last week that it would cost up to $130 to move a container from Kearney over to the eastern side of the port.

Mr. HAGEN. That is very possible, yes.

Mr. MURPHY. But how can you say that rates are equalized within that port?

Mr. FLORIO. Would the gentleman yield?

Mr. MURPHY. Be happy to yield.

Mr. FLORIO. Just to perhaps clarify this, is it my understanding that there aren't any TOFC terminals on the New York side? In fact, by publishing your rates, you are publishing them to the terminal? And that in fact if somebody desires to have something moved to another site, there is another charge that goes above and beyond the rate?

Mr. HAGEN. Yes.

Mr. FLORIO. So is it fair to say there is really no discrimination with regard to rates between the parts of the New York Harbor, but in fact by virtue of there being no such terminals on the other side, that there is no occasion to charge an additional rate, that you may charge an additional fee for the service of moving it to another place but that couldn't be construed as being discrimination because there is only one rate. Isn't that true?

Mr. HAGEN. That is correct. We only have rates to those points. And other contractors, not ourselves—provide the dray service to the other side.

Mr. MURPHY. Let me go a little further.

The 3R Act called for competition in rail service. True? It called for competition in rail service.

Now, the Chessie terminates in Philadelphia. And of course Chessie pays a per car charge to move up to Cranford junction where there is a link to the Staten Island Railroad Corp. on to Staten Island. So theoretically there is a trailer on flat car and a container on flat car terminal west of this theoretical line of Kearney that can operate: But it can't operate competitively with Kearney because we don't have a rail service competitive with ConRail into port.

Mr. HAGEN. Well, we are perfectly willing at any time to participate in the volume trailer rates that we use, with the Chessie system. For example, they come to Park Junction; they run from Park Junction to Cranford Junction, as you mentioned, via ConRail. It is their engines: They go right through. And then go on to the Staten Island Railroad.

We would participate in any joint rate that they would care to participate in to that point.

Mr. MURPHY. But then with that joint rate that they might want to participate in, that is a discriminatory rate to the eastern side of the port, or anything east of the New Jersey-New York line.

Mr. HAGEN. The rate again would be the same to Staten Island as it is to Kearney, if they put in the same rate, for example.

Mr. MURPHY. Well, it is not today. It is not.

Mr. HAGEN. Because that railroad does not participate in these rates.

Mr. MURPHY. You heard the colloquy between Chairman O'Neal and myself. Do you feel that unless section 202(F) 3 and 4 of the 4R Act that it can be disregarded—And I think your statement, Mr. Murphy, gave some of the historical background and you agreed with it—unless the aggrieved parties, namely Staten Island Railroad Corp., Brooklyn Eastern District Terminal, New York Dock Railway, and perhaps the steamship companies involved in the terminals must file a petition with the ICC?

Mr. HAGEN. I would say probably that is what would have to happen, yes.

Mr. MURPHY. Is it ConRail's policy to encourage its customers to truck freight from its yard in New Jersey to New York?

Mr. HAGEN. We are happy to have them take it anywhere that it will go because we desire to have the volume over these ramps because the rates are built on a volume basis. So the better the volume, the more desirous it is.

Mr. MURPHY. You would rather have a truck then use a car float?

Mr. HAGEN. No. We would be agreeable to use car float as long as the contribution that we receive on our particular part of the move keeps the rates in the same compensatory area that we have now.

Mr. MURPHY. Do you feel that you properly notify all ConRail customers that there is car float service available in the port of New York?

Mr. HAGEN. For regular break-bulk I think so, yes. We participate in the tariffs and participate in all of the joint tariffs.

Mr. MURPHY. Mr. Murphy, you have given us a pretty good history of ratemaking and rate development within the Port of New York.

Mr. RICHARD MURPHY. Thank you.

Mr. MURPHY. It is unfortunate that the railroads didn't have a little more foresight because with containerization and the movement of containers, the movement by car float could probably expedite loading and unloading by permitting loading on both sides of the large container ships that we move with today. And unfortunately the bankruptcy came at a time that forced the curtailment of all of these services; and a vital service, let's call it an automation procedure, in the industry was lost.

Mr. RICHARD MURPHY. Well, of course, Congressman, I really confine myself to the law. I really made no study of the economies or the cost of operation in New York Harbor except I do think it is some distance from New Jersey to Brooklyn and must cost something to get it over there.

Mr. MURPHY. But that is why the law was written: It was to equalize rates within a port so we did not have a discriminatory rate that favored one side of a port verses another because of the historical nature of that port.

Mr. RICHARD MURPHY. Well, Congressman, I was not a party to the legislative process that brought about the law. I can just look at the legislative history as set forth in the Congressional Record and the language of the statute itself. And it seems to me the statute says no change in the law in respect to port relationships or rate relationships within the ports. So I then started from there and I go back to see what the law was. And I don't perceive in the law a per se requirement of either parity to and from the North Atlantic range or within any specific North Atlantic port. That is the way I read the law.

Mr. MURPHY. So you personally were not a party to that process but ConRail was.

Mr. RICHARD MURPHY. I am sure of that; yes.

Mr. MURPHY. And ConRail to my mind had a very clear understanding as to what the intent of those amendments were.

Mr. RICHARD MURPHY. I can't speak on that, sir.

Mr. MURPHY. I have no further questions.

Mr. ROONEY. Mr. Florio.

Mr. FLORIO. Just briefly. As you can appreciate perhaps, I agree in one respect with Mr. Murphy concerning the need for equalization between ports; and perhaps don't agree with him with regard to the question about alleged discrimination within the port.

On the first point, I think you, Mr. Murphy, made reference to the fact that the unequalized rates are justifiable between ports on the basis of distance.

Mr. RICHARD MURPHY. May be justifiable.

Mr. FLORIO. All right, may be. OK, but that would be the rationale for your position in fact to justify the status quo. What is the rationalization then for the boxcar attempt to equalize? Now, you said something about ConRail has attempted to equalize boxcar tariffs between ports?

Mr. RICHARD MURPHY. Well, Congressman Florio, it is my understanding that some time during the year 1963 when the North Atlantic port rate structure was equalized, there were some rate changes made to Baltimore and Philadelphia which were not made applicable to New York by the former Penn Central Railroad. And that after ConRail commenced operations, ConRail undertook to eliminate that difference in rate treatment and equalize the boxcar rates. This did not involve a large amount of traffic or a large number of tariffs, but that is what I was referring to.

Mr. FLORIO. I suppose what I am getting to is that the policy decision was made by ConRail that there was some justification for an equalized boxcar rate between the ports, notwithstanding the differences in distance. And I suppose by extension you are saying, well, if it is adequate and that is a good social or economic policy for ConRail in that regard. But why not with regard to other rates that currently are unequal?

Mr. RICHARD MURPHY. Well, as I understand it, the only rates which are unequal are the TOFC or container rates, which are rates where a trailer or a container is put on a boxcar; and that the structure for that sort of rate is essentially to meet motor carriers because all you are doing is putting your trailer on a flatcar instead of on the highway. And that, therefore, it is my understanding that the competitive environment in which they exist is the highway distance from the midwestern point to these various seaports. And the rail rates follow the rates of let us say the predominate mover of the traffic, the truck.

And the Commission, the Interstate Commerce Commission in an order that was issued around 1972 held that there was a basis for treating the TOFC rates different from the boxcar rates.

Mr. FLORIO. What would be your thought as to the predominant mover of boxcar traffic prior to it getting to the railroad?

Mr. RICHARD MURPHY. Boxcar traffic is originated by the railroad.

Mr. HAGEN. It would come right from the shipper, Congressman, the consignee.

Mr. FLORIO. Thank you.

Mr. ROONEY. Ms. Mikulski.

Ms. MIKULSKI. Mr. Hagen and any other members of the panel who care to answer, do you feel—and this is a question that is somewhat philosophical—do you feel that Congress should by statute, mandate the level of equalization of rail rates or do you think that is best handled by ICC and the administrative procedures that have been in place for a number of years?

Mr. HAGEN. I would have to agree with that statement. Probably the ICC would be the place to settle that.

Ms. MIKULSKI. So that as a railroad manager you think we ought to leave it as it is, rather than have Congress getting into ratemaking?

Mr. HAGEN. Yes, ma'am.

Ms. MIKULSKI. If freight equalization took place in the North Atlantic ports, what level do you think it would be: The Baltimore rate or the New York rate or would you speculate?

Mr. HAGEN. Well, by particular account it would probably be at the New York rate because the markup on the TOFC or the container is not very high. And therefore, you have to have a rate level that is compensatory. In fact, one of the provisions of the 4R Act required that the rates be compensatory.

So we would probably have to settle on the higher level.

Ms. MIKULSKI. Well, just for the record, a two-container rate fee from Chicago and Baltimore would be $981; a two-container rate from Chicago and New York would be $1,097. That is a difference of approximately $116, which I think is substantial. Would that not then become self-defeating and drive people away from the use of ConRail or rails generally?

Mr. HAGEN. Well, one of the problems we have had in equalization of container rates is, because it is so highly truck competitive, is that mileage is really the determinant factor. And so that if some place is closer, we tend to put in a truck-compelled rate. Now, in our big volume rates we have equalized on the 10-car rate and the 30-car rate: We have the same level of rates.

Ms. MIKULSKI. But here we are talking about the one, two, and three containers.

Mr. HAGEN. That is right. And those are the ones that are very truck competitive, and those are the ones we try to stay competitive with the trucks by charging a mileage rate.

Ms. MIKULSKI. Do you think by going to the New York rate we would in effect deflect traffic not only from Baltimore, which is obviously my interest, but the North Atlantic ports in general and have them perhaps go to other modalities: Maybe a minibridge concept? Would we start to use the west coast ports?

Mr. HAGEN. Probably you would have some diversion from North Atlantic ports but you would also have diversion to a truck.

Ms. MIKULSKI. I mean it's of national interest to me and to the consumers. Don't think it is only because of Baltimore.

Mr. HAGEN. True. We have to watch out for diversions to trucks. So we want to stay as compensatory as we can, and still compete for the traffic. And it would tend to drive traffic away from us.

Ms. MIKULSKI. So you think it would drive traffic away from North Atlantic ports. No. 2, it would definitely have a negative impact on ConRail in these one-, two- and three-containers which you are trying to build up generally?

Mr. HAGEN. Yes, right.

Ms. MIKULSKI. Could that be an important part of your marketing strategy? In other words, is volume of this size, that is the one-, two-, three-container traffic, important to ConRail in terms of its economic survival?

Mr. HAGEN. Yes, I think it is. We are both in what I call the wholesale market and the retail market in these areas and these one and two container moves are important to us as well as the major one. But it is an important aspect.

Ms. MIKULSKI. Could I go far enough to say that it could be the cutting edge in your breaking even or needing increased subsidies?

Mr. HAGEN. Well, I think that that might be a little far in the sense that this traffic is so dominated by the trucks that it is a good opportunity to help that problem. And I think it is very helpful for us to have this traffic because the trucks are the predominant haulers in this import-export traffic.

Ms. MIKULSKI. In your work with the various ports do you have any idea why the New York Port costs $116 more than the Baltimore one? It would seem to me that there is more at issue here than simply geography. We are more in-land than New York.

Mr. HAGEN. Do you mean on the rate? Well, it is not anything other than a mileage difference. It is just the way the rates are made.

Ms. MIKULSKI. Thank you, Mr. Chairman. I have no other questions.

Mr. ROONEY. Thank you very much gentlemen.

The next witnesses will be a panel of the Honorable William C. Hennessey, commissioner, New York Department of Transportation and Mr. Louis Rossi, director. Railroad Group, N.Y.-DOT: Mr. Peter C. Goldmark, Jr., executive director, Port Authority of New York/New Jersey, a Mr. Art Mulhearn; and Mr. Henry J. Gavan, Economic Development Administration, city of New York, and Mr. Carmine Ragucci of Howland Hook. Mr. Hennessey.

STATEMENTS OF HON. WILLIAM C. HENNESSEY, COMMISSIONER, NEW YORK DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY LOUIS ROSSI, DIRECTOR, RAILROAD GROUP; PETER C. GOLDMARK, JR., EXECUTIVE DIRECTOR, PORT AUTHORITY OF NEW YORK AND NEW JERSEY, ACCOMPANIED BY FRANCIS A. MULHERN; HENRY J. GAVAN, ATTORNEY, ECONOMIC DEVELOPMENT ADMINISTRATION, CITY OF NEW YORK, ACCOMPANIED BY CARMINE RAGUCCI, PRESIDENT, HOWLAND HOOK TERMINAL OPERATING CO.

Mr. HENNESSEY. Thank you, Mr. Chairman. Thank you for inviting us here today because we, New York State, truly believe that your subcommittee has helped our State to no end. While we are very satisfied with ConRail, and the way it is operating—and I might say at the outset I am not following my statement—while we are very satisfied with ConRail as they are operating up-State, we would like to point out that somehow or other for no apparent reason known to us they have discriminated in the New York and New Jersey Port. This is true within the port and in comparison to the eastern ports. And so we are here today for the same reason, Mr. Chairman, asking the subcommittee to take what ConRail has to say with a grain of salt because there are two sides to the story.

There is indeed discrimination. As we who are suffering read section 202, we see that that equality does not exist as it was clearly intended.

I would ask you to pay more close attention to what Mr. Goldmark says, who is executive director of that port because he and I have been working on this for the past 4 months. It was dismaying for me to hear today that a study was possible and administrative solutions would be more apparent than the legislative intent, as we see it today. And it was equally dismaying for me to hear that we had not made that petition to obtain compliance or equality within the port itself.

And so I am sure that from our point of view we will do that just as quickly as we can and probably start it on our way home today.

And I would not expand on that at this time. We are all available to answer questions for you. But I would like to ask a particular favor and allow me the privilege of writing to you requesting that you conduct a hearing similar to this for the D. & H. Railroad one day soon and I would ask that I be allowed to do this and that you would consider that because we have very serious problems with the D. & H. today and that, too, affects the port as you may well know.

Ms. MIKULSKI. What does D. & H. stand for?

Mr. HENNESSEY. Delaware & Hudson Railroad and I am sorry to bring that up but I had to take an opportunity because it is just as important and just as dear to my heart.

Ms. MIKULSKI. We understand.

Mr. HENNESSEY. And with that, Mr. Chairman, I will allow my other two assoeiates on the panel to give their short-presentations.

[Mr. Hennessey's prepared statement follows:]

STATEMENT OF WILLIAM C. HENNESSY, COMMISSIONER, NEW YORK STATE DEPARTMENT OF TRANSPORTATION

Thank you for the opportunity to testify on this subject before this important Subcommittee. My name is William C. Hennessy and I am Commissioner of Transportation of the New York State Department of Transportation. At the time ConRail's first train ran I was Executive Deputy Commissioner of that Department and during the development of the Final System Plan I was its Assistant Commissioner for Operations.

I have noted this background for two reasons. First, I have seen New York's rail system gradually but inexorably deteriorate for many years until this Subcommittee stepped forward and enacted the various statutes that led to April 1, 1976. Under ConRail I have seen that trend partially arrested and have seen many improvements. We, in New York, are thankful for the interest and concern this Subcommittee has shown.

As just one example, I am sure you will recall the special crisis found in New York's "Southern Tier" where the Chessie System withdrew from its anticipated purchase of the former Erie Railroad main-line and its important branches. This Subcommittee personally intervened and obtained for us from Chairman Jordan important rehabilitation and service guarantees at the June, 1976 hearing held in Elmira, New York.

I am pleased to report that, except for a few instances where the ConRail staff have tried to nibble away at that pledge, your guarantees have been honored. I trust they will continue to be.

Today, every day in New York ConRail handles nearly 10,000 carloads, operates 200 trains including 60 local freight trains. This is a railroad that controls 95 percent of New York's rail traffic and, in that position, controls a substantial portion of the nation's agricultural and industrial output. I doubt that any Railroad so heavily dominated any other portion of the national economy.

The biggest planning, marketing and operational mistake made by ConRail has to be its treatment of the Port of New York and the domestic rail traffic of the City of New York. The related traffic in adjacent New Jersey has been similarly affected.

On December 23 (letter attached) I went to Chairman Jordan to ask for three things:

1. *Reinstitution of direct rail service to the Brooklyn Waterfront.*—This entails nothing more than the interchange of traffic between an existing ConRail line and the New York Dock Railway (a Class II Railroad in New York) over a restored connection which the state has offered to finance. This connection will be installed and, if it takes litigation, the traffic will move. But I cannot understand why a simple thing like this can't have been resolved.

2. *Equalization of East Coast Container Rates and rates within the Port of New York.*—Because of its unique monopoly position ConRail is in a position to ignore long-standing national ratemaking policies and, it appears, flaunt a section of the Railroad Revitalization and Regulatory Reform Act specifically inserted by this Subcommittee for this purpose (Section 202).

3. *Institution of direct intermodal services.*—It makes no sense for ConRail to freeze itself out of the gigantic intermodal (TOFC–COFC) traffic of New York City/Long Island. Yet, it has done this by refusing to operate such services directly to the area East of the Hudson River and concentrating its terminals in New Jersey at sites so congested and with such high truck toll that ConRail has all but been frozen out of this traffic by all-road truck competition. ConRail has even declined to participate in a joint FRA/NYDOT demonstration of such a new service which would guarantee to make good on 100 percent of any start-up loss or costs.

Coupled to these three examples of harmful inaction, I'd like to quickly cite two instances of harmful actions by ConRail. This first took place on startup date itself—April 1, 1976—when ConRail isolated only three railroads in the nation for which it refused to honor all existing tariffs and rates—these three were New York Dock, Brooklyn Eastern District Terminal, and the Long Island. Although ConRail backed-off its pressure on the first two it unilaterally forced Long Island to increase its rates 35 percent in one step. The purpose of this was to obtain a higher division on total revenue for ConRail. The second example continues to take place—these are petty actions against Chessie and D&H which serve the Port on facilities of their own in a small way by small obstructions laid and lack of cooperation all along the way. The competitive services of both railroads have been eroded.

Bad though this record is, it is readily corrected and based on our experience in the "Southern Tier" I know this Subcommittee can correct this promptly. I will help you in any way I can, too.

With direct service to Brooklyn, with honest, nonmonopoly rates set, with COFC/TOFC service, and with some cooperation with the local carriers, ConRail's revenues should be enhanced, new rail traffic developed, and the economy of the City and the Port Region developed.

Under those assumptions, I would like to offer two further suggestions on the ConRail financing. First, at the very minimum, substantial new grant funds must be made available to (a) rehabilitate ConRail's secondary lines (this could be done by outside contracting); and (b) to purchase freight cars—particularly covered hoppers and refrigerated cars on trailers—needed right now. Shippers throughout the Northeast are suffering by a deferred maintenance policy on secondary ConRail routes and the absence of sufficient freight cars (c) to acquire locomotives necessary to overcome the horrendous power shortages experienced by ConRail the past two years.

Second, I think ConRail would be in a better position to succeed as a private carrier permanently—and not turn into an Amtrak or nationalized roadbed or operation—if the funds already provided and about to be provided are made one-shot grants. With the loans converted into grants, ConRail will emerge as a debt-free railroad with its plant restored. At that point, it should be treated as a private railroad, separate from any further Federal involvement. If this were achievable, I believe the grant mechanism will be more successful public policy than an interminable loan program. We all want ConRail to succeed as a private enterprise.

In good conscience, the $1.3 billion of aid to ConRail requires some consideration of D&H—the only other solvent railroad in the area east of Buffalo and Philadelphia. Put succinctly, a D&H plan for a $37.5 million oan to participate with the Chessie in competition with ConRail was altered by the federal planners to a larger financial package which was conditioned on acceptance of service extensions which proved unprofitable or unworkable. The Federal planners must accept responsibility for the situation D&H finds itself in and allow the railroad to work out its own solution as ConRail is endeavoring to do, with federal aid.

DECEMBER 23, 1977.

Mr. EDWARD JORDAN,
Chairman and Chief Executive Officer, Consolidated Rail Corporation, Six Penn Center Plaza, Philadelphia, Pa.

DEAR MR. JORDAN: The matter of Conrail service to New York City area is of deepest concern to us. As you know, a major grant-in-aid investment program is underway in rail freight facilities in the area as a top priority. I am writing to describe our coucern in this regard and to seek your active participation with us in resolving problems associated with rail service to New York City.

1. Direct Rail Service to Brooklyn Waterfront: The State will finance construction of a connection between your Bay Bidge Line and the Brooklyn Waterfront/Bush Terminal area. The City will obtain a right-of-way through Brooklyn Army Terminal and provide relief from the utility tax on railroad freight operations. Can we have your commitment to institute rail service upon completion of the connection and to establish schedules, tariffs, and reasonable revenue-division agreements with the New York Dock Railway?

2. Disparity of East Coast Container Rates: You are, of course, well aware of the widespread feeling that the Port of New York is at a disadvantage relative to other East Coast ports due to differences in Inland container rates. There are two schools of thought on this issue. One holds that Conrail container rates to the Port of New York are unreasonably high relative to Conrail's costs; the other holds that regardless of the reason for the difference, the rates should all be the same on the basis of the 1963 Rate Equalization Case. I understand that Conrail and the Port Authtority of New York and New Jersey agreed to do a joint study of this issue a year ago. Are you at this time prepared to equalize container rates to East Coast ports, or is this a matter that requires court action?

3. Intermodal Service: Traffic experts foresee a substantial market for rail intermodal service (COFC/TOFC) to New York City. Two immediate impediments to fully developing this market are (a) inadequate clearance on the Hudson Division for TOFC, (b) lack of adequate means to float COFC and TOFC traffic from New Jersey to the City, (c) exhorbitant cost of drayage between New Jersey and the City. For the long term we have agreed to cooperate on the "Intermodal study" which should document the full market potential; whereupon the State would arrange to finance necessary clearance improvements to permit inauguration of full TOFC/COFC service. For the short term we would like to serve existing needs and developing markets through institution of float service for intermodal traffic, and we are prepared to finance any needed improvements to the floating equipment.

4. Rail Facility Investments: To complement the State and local programs just discussed, we would like to have Conrail's participation in the improvement of neglected facilities as follows:

(a) Upgrade Bay Ridge Line
(b) Modernize Greenville Yards, float bridges
(c) Upgrade Oak Point Yard as principal NY City serving yard
(d) Establish security fencing pilot project (State funded).

5. Matters for Further Study: The issues discussed above have received thoughtful study and can be resolved now. But there are other issues causing concern that cannot be resolved immediately. Can you agree to study with us:

(a) Conrail takeover of LIRR freight services (with subsidy of unprofitable services), and transfer of all commuter service management to LIRR
(b) Conrail participation in Hudson Division maintenance in MTA territory
(c) Feasibility of a terminal railroad organization for all New York City freight services.

If you desire, we would be pleased to meet and discuss with you the five items above.

Sincerely,

W. C. HENNESSEY, *Commissioner.*

Mr. MURPHY. Mr. Goldmark.

STATEMENT OF PETER C. GOLDMARK, JR.

Mr. GOLDMARK. Mr. Chairman, I do have copies of my testimony. I am not going to read it.

I think the best thing, if we could, is to continue the dialog that you established with the people that have appeared so far. And in that connection I would like to make three or four very simple points.

The broader philosophical and structural elements are presented in my testimony.

No. 1, we believe that there is a principle of equalization that has been established by custom and by law among ports in a similar area. That equalization principle was upheld in the 1963 case to which you referred.

We believe that this principle should apply were we simply talking about privately operated railroads. One of the most important points I would like to make to this committee is that we are talking about a railroad that is subsidized and assisted by the Federal Government, by taxpayer dollars. And I would argue to you, Mr. Chairman, that in that situation there is a double or additional obligation not to in effect operate with the assistance of taxpayer dollars in a way that discriminates among ports within one region.

And I would like to address a question Mr. Russo raised, and I am sorry he is not here. He asked one of the prior witnesses, why not leave the rates the way they are? The answer to that in my mind is very simple: the rates the way they are as they apply to container rates and the export-import traffic do discriminate against most of the ports in the North Atlantic ports. And I would like to state in this regard that because of the shortness of the notice of these hearings, they were not able to be here today, but I do speak on this point as part of an alliance with the Port of Boston and the Virginia ports.

And the present discrimination that exists between the Port of Baltimore and the other North Atlantic ports widens every time those rates are increased. The most serious and likely prospect for the other North Atlantic ports is a continued deterioration. It is not a static situation; there is a continued and increasing deterioration and diversion.

Mr. MURPHY. Would the gentleman yield at that point?

Mr. GOLDMARK. Yes, sir.

Mr. MURPHY. We have watched ratemaking. Ratemaking is a science. But increases in rates seem to come across the board. And I think we are in for a 3-percent across-the-board increase now in rail rates nationally. No; 4 percent. And that will just further the gaps that have historically developed, whether or not a given rate is compensatory or whether or not a given rate is not compensatory. And I think that is something that we are going to have to in this subcommittee and committee analyze a little bit closer.

And you sure bring out the fact that we are widening the gap every time there is an increase, with across-the-board and simplistic solutions to what are complex problems.

Mr. GOLDMARK. That is the aggravation of the process that I was talking about, Mr. Chairman. For those of you among the committee who have a sense of history, I know we are all impressed with the leadership that is provided in this country by past Governors of Georgia. I thought I would recount to you the Governor of Georgia who once was the champion of a great rate discrimination fight. This was Governor Arnall of Georgia in 1940. One of the historic forms of discrimination in regions of this country was the difference in rates of manufactured goods between the North and the South. An example of these is that a cast iron stove moving to the North from Birmingham had one rate, and the rate the opposite way was different. It was structured so as to favor the manufacturing industries in the North. And at that time, incidentally, the normal route for seeking relief was tried. I believe this case was first taken to the ICC.

And finally, the great Governor of Georgia, Governor Arnall, took the case all the way to the Supreme Court and won the case.

That is when I started to learn about this issue. And I cite that as a fascinating historical example of how sometimes it has taken very decisive and strong action to break a pattern of discriminatory rates.

As you mentioned, Mr. Chairman, and as other speakers have, this principle was upheld in 1963 by the Supreme Court in the most recent equalization case among ports. The trouble with that decision was it did not include containers. Now, 70 percent of all traffic does move in containers. And that is the nub of the problem in terms of the other North Atlantic ports.

Now, the issue was raised here earlier this morning; the issue of standing before the ICC. I will presume upon the committee by being blunter perhaps than I should and tell you very frankly what my judgment is. It would be possible for various parties in terms of discrimination in container export-import rates among the ports to bring an action before the ICC. My personal judgment is that we would be here next year and the year after and 5, 6, 7 years after that while that issue went through the ICC and then the court battles that would ensue whichever side lost. And I make no secret of the fact, Mr. Chairman and other members of the committee, that the interest of the North Atlantic ports in pursuing the legislative route is because of that very practical fact of life.

Now, I am not a lawyer. I do have my Deputy General Counsel here who can elaborate for you why that is such a difficult and time-consuming route, but that is our judgment: that while it is within the standing of the Port Authority of New York and New Jersey to go before the ICC and file, that is not likely to produce an answer or resolution of an issue that is deteriorating annually, as you say: a resolution in any more speedier period than occured the last time around, which I believe was approximately 8 or 9 years.

Mr. Florio. Would the gentleman yield? I am sure you are aware of the double-edged nature of your proposal. Fine, you may like very well what the legislature would do at this point in setting rates, but there may come a time when the precedent is established that you may not like what another Congress is going to do. And obviously I speak with self-interest, representing the Philadelphia area, but I am just concerned about advocating legislatively prescribed rates, which I think is what you are talking about.

Mr. Goldmark. We have given that a lot of thought, and obviously we did not come to this proposal lightly. I think there is a difference between asking the Congress to restate what I believe is already national policy, which is equalization in export-import traffic, and asking the Congress to set rates. And I do think that what we are asking for here is a restatement in legislation of what in fact is a legal and historic principle in this country, which is equalization of rates on export-import traffic among ports in a comparable area. We have gotten away from that because of historical accident, sir, which is the fact that when the Supreme Court decision was made in 1963, a container was a funny thing you put on a truck and hauled around, and it was less than 1 percent of all traffic.

And so what I see as the issue is will the Congress find it suitable and appropriate to reaffirm a principle which in fact already exists; which exists, as you know, on the waterborne portion of export-import rates. And I would not propose, and I would be the first to join with you in the thought that it is not something that we would recommend, that the Congress become involved in specific settlement of rates.

Mr. FLORIO. I assume you would have some thoughts as to the types of language and guidelines that should be contained in legislation that would either reaffirm or for the first time, depending on who you are listening to, set the fact of equalization as a goal. Because, as you say, there has been some difference as to whether the previous legislation that talks about equalization in fact was advocating equalization or was just reenforcing the previous legislative approach which obviously someone awhile ago felt was not being violated in any way. That is the previous concept of equalization.

So if we are going to talk about embodying in this law or any other law a reaffirming of the desire to equalize, it seems to me that we are going to have to give some specific direction to the ICC as to what we see, we the Congress, as the components of equalization. And, therefore, we are going to need some specific standards.

And what I am asking you is: Do you have some specific standards that you would be in a position to convey to the committee?

Mr. GOLDMARK. I would be delighted at a later date to sit down with you or any other members of the committee and discuss that. Your comment prompts me to add once again I think we are dealing with a particularly sensitive issue because we are talking in the main about a rail operation which is assisted by the U.S. taxpayer. And I think that makes the claim of the equalization principle stronger than even would otherwise obtain.

Mr. MURPHY. Before we proceed with you, Mr. Gavan, we are going to take a 5-minute recess.

[Brief recess.]

Mr. MURPHY. The Chair regrets the delay, but there is a little item called the Panama Canal which is taking up a few people's time around here. And Mr. Goldmark, your statement will be placed in the record.

[Mr. Goldmark's prepared statement follows:]

STATEMENT OF PETER C. GOLDMARK, JR., EXECUTIVE DIRECTOR OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Mr. Chairman, I welcomed the invitation to appear before you today to present our agency's views on ConRail's progress, particularly on ConRail's operations and rates in the Port of New York, their relationship to the port's competitive position, and their importance to the New York metropolitan area's economy.

For those members of the subcommittee who are not familiar with The Port Authority of New York/New Jersey, I should explain that the Port Authority is an agency of the States of New York and New Jersey and is charged with dual responsibilities: one, to plan, develop and operate terminal transportation and other facilities of commerce in this region and two, to promote and protect the trade and commerce of The Port Authority of New York/New Jersey. Our concerns in discharging these responsibilities compel me to describe to the Subcommittee the effect that the creation of the ConRail monopoly has had on our economic region.

As you know, Conrail was created through legislation passed by Congress and has been sustained by appropriations and loans of federal funds to allow it to continue its operations. This legislation for all practical purposes created a monopoly on rail freight operations in the northeast region. In spite of the clear Congressional mandate in the 3R Act of 1973, the New York Port District is the only major Metropolitan area in the country today lacking competitive rail freight services. This is of great concern, since competition stimulates better service and provides the strongest incentives for the establishment of an equitable rate structure.

While in concept, the rail organization that created ConRail appeared to be a good legislative solution to the staggering problem of the bankrupt carriers, ConRail in operation has presented a number of problems not only to the Port of New York/New Jersey but also to a number of other North Atlantic ports. Since the creation of ConRail, rail rates have become discriminatory and rail service to our port has deteriorated. We have attempted to work with ConRail on these issues and will continue to do so.

By far the primary freight rate problem facing the Port of New York/New Jersey is the present inequitable railroad rate structure on the movements of our containerized export-import cargo. This waterborne, high value general cargo represents over 70 percent of our Port's traffic in this category. The present rail rate structure favors the Port of Baltimore over New York and has contributed to that Port's current position of handling *approximately three-quarters* of these container movements to and from the Midwest. The problem is not restricted to New York; the other North Atlantic ports are also adversely affected by Baltimore's rate advantage. This situation is wrong as a matter of history and principle.

It is ironic indeed that our Port now finds itself in a situation not unlike that which occurred in the South a century ago. It will be recalled that after the Civil War, the South suffered decades of virtually no economic growth. Chief among the punitive measures inflicted on the South was a system of discriminatory railroad freight rates under which industry in the North could ship to markets in the South at very much less than the freight rates applicable on Northbound commodities. For example, the rate for a cast iron stove from Birmingham, Alabama moving to the North was approximately $1.60 a hundred pounds. The same stove made in Pittsburgh moved to the South would cost about $1.00 per hundred pounds.

In the first third of this century, the great paper and textile industries began to move into the South to utilize its abundant raw materials. By that time the so-called class rates of the railroads in the South and West were as much as 40% higher than they were in the area east of the Mississippi and north of the Ohio River, that is, the Northeast. The rate structure made it difficult for Southern manufacturers to compete with those located in the North.

The Southern Governors, aware that this inequitable rate structure was restricting the economic growth of the area, took the matter all the way to the U.S. Supreme Court. Governor Ellis Arnall of Georgia himself argued the case before the Court. The South won its case and the rates were equalized. Justice William Douglas, speaking for the Court, made it clear what freight rate discrimination really means: "Discriminatory rates are but one form of trade barriers. They may cause a blight no less serious than the spread of noxious gas over the land or the deposit of sewage in the streams. They may affect the prosperity and welfare of a State as profoundly as any diversion of waters from the rivers. Thy may stifle, impede, or cripple old industries and prevent the establishment of new ones. They may arrest the development of a State or put it at a decided disadvantage in competitive markets." [1]

Once the South was able to throw off the yoke of a ruinously discriminatory railroad rate structure, it moved ahead with a vigorous program of economic growth which has led to its current prosperity. This, in essence, is what we are talking about when we refer to the impact of discriminatory rail rates on the economic vitality of our port and region.

Back in the 1950's the New York/New Jersey Port interests waged a battle to achieve rail freight equalization on cargoes moving between our port and the

[1] *Georgia* v. *Pennsylvania R. Co.*, 324 U.S. 439 (1945).

midwest. It was our position that the governing principle of inland freight rates should be the equalization of total rail-ocean charges and free competitive opportunity for all ports.

In the landmark decision of the U.S. Supreme Court in 1963, rates between all the North Atlantic ports and the midwest were equalized on freight moving in conventional rail cars. New York's former Governor, Thomas E. Dewey, presented the case to the high court and interpreted the victorious outcome as follows: "The competitive opportunity opened up by equalization ranges far beyond the particular ports which participated in the litigation. On traffic moving between the midwest and foreign ports in many parts of the world, Baltimore has long had parity with Galveston, Houston, New Orleans and other Gulf and South Atlantic ports as far away as Corpus Christi, Texas. For the first time in many years we can compete for business on even terms with ports up and down the entire length of the Atlantic Coast and the Gulf of Mexico."

While this represented a victory at the time, the Supreme Court's decision dealt only with the general cargo moving in boxcars or on open-top equipment. Unfortunately, the railroads took the position that the 1963 decision and the equalized rates which followed did not apply to the new containers which were introduced into export-import traffic in the the mid-1960's—and which now dominate that trade.

When steamship containers began moving to and from inland points in quantity, the railroads applied a mileage rate scale which had been applicable to domestic truck trailer-on-flat-car (TOFC) movements. Since mileages to most midwest points are lower from Baltimore, rates are also lower. Thus, the principle of the Supreme Court's decision—that ports should be able to compete equally in building the country's waterborne commerce— has been circumvented by the action of the railroads. And the New York-New Jersey Port, which handles a very high volume of foreign trade container traffic, some 70% of its total export-import cargo, continues to suffer the consequences of this inequitable rate structure.

When Conrail entered the picture, it took the position that rate equalization does not apply to import-export containers. Thus these containers continue to move between our port and the midwest on domestic mileage rates which heavily favor Baltimore to the disadvantage of the other North Atlantic ports. Even more importantly, as general rate increases take effect, Baltimore's advantage (and other ports' rate disadvantage) increases sharply. As a typical example, on a 40-foot container carrying 15 tons of cargo, Baltimore has a $67.50 advantage over New York on movements to and from Peoria, Illinois, a key manufacturing center of high value machinery. Comparable disparities exist on container movements throughout the midwest, and the railroads are expected to apply later this year to the Interstate Commerce Commission for yet another 4 percent general rate increase, which will further worsen the situation. As I have indicated this problem is not confined to New York. The Ports of Boston and Hampton Roads (Virginia) have also seen their disadvantage increase in competing with Baltimore as rates have gone up generally.

The present high percentage of containerized general cargo moving through this port can be expected to increase as more and more trade routes go to containerships throughout the world. Unless rail freight rates on this cargo are equalized, however, we can expect that more of the cargo presently moving via this port or other North Atlantic ports will move through Baltimore. Indeed, our Port Authority Trade Development Offices here and abroad have reported many instances of cargo diverted from this port because of these inequitable rail freight rates.

In view of Conrail's monopoly of freight services in our port, we feel that they have a special responsibility to keep the ports they serve competitive with each other. That responsibility becomes an obligation when we consider that Conrail is subsidized by taxpayer dollars and indeed the very purpose of these hearings is to consider an additional extension of $1.3 billion dollars in federal support. Conrail is not meeting the responsibility to treat the North Atlantic ports equitably and that is why we have turned to the Congress for help.

When Conrail was formed in 1976, efforts were made to create a competitive rail system for the Northeast. This was the intention of Congress. Over the years Congress has indicated that it favors to the greatest extent the free movement of export and import cargoes through this nation's ports. Congress has repeatedly held to the position that there be few, if any, restrictions on the free movement of commerce and that healthy competition among ports is desirable and economically sound. We agree.

We believe that ports should have the right to compete for international commerce without rate differentials. Certainly, it is difficult for us to accept the imposition of such differentials by a federally-financed carrier like Conrail. Since all of the states adversely affected by Conrail's policy are substantial contributors through federal taxes to the huge amount of federal funds going to Conrail, we feel that no preference should be given to any port served by Conrail.

Since December 1976 Conrail management has been repeatedly requested to take action to equalize the container rates on waterborne traffic to and from New York. But nothing has been done. It is clear to us that Conrail will not move on its own to adjust the rates. The rate differential handicap burdens not only our port but other North Atlantic ports and deprives us of cargoes and work for our people—and uses taxpayer dollar to exercise that discrimination.

Our Port Authority economists estimate that about 550,000 additional tons of export-import cargo might have moved through our port last year, were it not for the container rate disparities. Port and foreign trade-related employment in the New York-Northeastern New Jersey Region, which represents some 235,000 jobs, has declined by some 25,000 jobs in the past ten years. Clearly many of those jobs could have been saved if we had been able to handle the cargo lost due to container rate discrimination. And the most serious, and unfortunately the most likely, prospect for us is that the situation will deteriorate further if the principle of equalization is not reaffirmed.

The value per ton of New York's oceanborne general cargo exceeded $1,800 last year. This would put the value of the 550,000 tons of additional cargo lost to New York at over $1 billion and the high value of these cargoes generates more jobs at higher pay than equivalent amounts of lower value bulk cargoes.

I agree with the statement of Secretary Adams before this Subcommittee on April 12th in which he observed that the continued availability of rail freight service to the Northeast is essential to the nation's economy. But I feel that the application of discriminatory freight rates by Conrail to service to certain ports in the Northeast should not be allowed to erode the economy of the northeast.

Conrail has presented our port not only with difficulties arising out of the application of discriminatory freight rates to and from the Port of New York-New Jersey on export and import traffic but has compounded a problem that has long existed dealing with the rates applied on intra port traffic.

The Port Authority of New York and New Jersey has historically maintained the position that the Port of New York must be treated as an organic whole and for many years has fought for the conformity of rates to and from all railroad stations within the port district. This has been through the years and continues to be a cardinal principle with the Port Authority. Mr. Jordan in his testimony on April 12 before the subcommittee alluded to the fact that the Port Authority operates under a theory of homogeneity in considering intra port rates. We agree with this statement and it should be noted that the Port Authority had its genesis in a railroad rate case decided in 1917 wherein the Interstate Commerce Commission found that ". . . historically, georaphically and commercially New York in the individual district in the northern part of the State of New Jersey constitute a single community . . ." and that: ". . . the remarkable growth and progress of the port can best be continued by treating it as an organic whole." This principle was affirmed in 1934 for the Interstate Commerce Commission in the Lighterage Case and has continued to be a guiding principle of the Port Authority even to date. The Port Authority continues to take the position that equalized rates should be applied to all stations within the port area.

As I have previously noted, there has been a frustration of the clear Congressional mandate in the 3 R Act of 1973 that competitive rail service be provided to the northeast region. It is axiomatic that competition is good for commerce and eventually results not only in the improvement of services but also the lowering of rates. It cannot be denied that the service rendered by ConRail not only to the Port of New York-New Jersey but to other North Atlantic ports has been deficient. We, the Port Authority, have received numerous complaints from midwestern shippers advising us that they have diverted freight shipments from our port because of the deficiencies in the service rendered by ConRail. We think it imperative that ConRail not be allowed to inhibit the extension of service by competitive railroad systems into the New York area where the real possibility of such competitive service exists. Such inhibition by ConRail, of competition by other carriers is clearly contrary to the spirit of the statutes that created ConRail as a federally-subsidized railroad.

We have engaged in discussions with the officials of ConRail not only seeking the elimination of discriminatory rates applying to and from the ports but also with the view to obtaining more efficient service to the New York metropolitan area. So far those discussions have not been fruitful. Our discussions with ConRail naturally will continue but we feel obliged to call to the attention of the sbcommittee the fact that I have just described.

We believe that every port should have an equal competitive opportunity in the business of export-import traffic, and we believe also that shippers should have a free choice of ports. We welcome healthy and economical sound competition and will strive to match it. However, we feel obliged to work towards the elimination of railroad freight rate inequities that discriminate against not only the Port of New York-New Jersey but other North Atlantic ports and any other freight rate inequities that discriminate against certain geographical areas within our port.

It has been a pleasure to appear before this subcommittee and present the Port Authority's views and concerns about the service by ConRail. I will be happy to answer any questions posed by you or other members of the committee.

Thank you Mr. Chairman.

Mr. Murphy. Mr. Gavan.

STATEMENT OF HENRY J. GAVAN

Mr. Gavan. Mr. Chairman, accompanying me today, as I noted before, is Carmine Ragucci, president of the Howland Hook Terminal Operating Co. Mr. Ragucci will be available to answer any questions. Following the lead of Commissioner Hennessey and Mr. Goldmark, I will also depart from my prepared remarks, which have been submitted. And first of all, I would like to endorse the statements made by both Mr. Goldmark and Commissioner Hennessey.

And I would like to perhaps point out that has been pointed out before. I think the committee is concentrating, and properly so, on two questions. One revolves around the question of equality of rates between the various Northeast ports and the other is freight rate parity within the Port of New York. Mr. Goldmark, I think, has spoken to the first question. In particular, I endorse his remarks on that. And I would like to speak briefly to the question of freight rate parity within the Port of New York, which I believe is supported fundamentally by the Interstate Commerce law and certainly specifically by the Murphy amendment to the 4–R Act. And I noted in your comments, and I know it is not my job to pose questions to you, Congressman, but it seemed to me from what I had seen and read and understand and what I thought you said earlier, it seems to me the legislative of Congress was very clear to the Congress in what they were doing with the Murphy amendment.

It seems it is not clear to the gentlemen from ConRail and to a lesser extent to the ICC and perhaps I know that I intend to go back and read the Congressional Record and look at that debate and see if it said what I thought it said because certainly my recollection of it is somewhat different than either of these gentlemen's. They seem to think that it talks about some vague principles and I thought there were more specifics attached to it than that. And I think probably your recollection is more closely akin to mine than it is to theirs.

Mr. Murphy. Mr. Gavan, Ms. Mikulski, and I realize this is not the only instance where the intent of Congress has been maybe changed a little bit by the regulators or the implementors. That is one of the things we work with on a daily basis.

Mr. GAVAN. I think, Congressman, I would like to address a couple of questions and basically a couple of statements raised earlier today, particularly that of Mr. Hagen and Mr. Murphy, your namesake, from ConRail.

Ms. MIKULSKI. I have an ear infection and would you just speak as loud as I know a New Yorker can?

Mr. GAVAN. Yes, ma'am. There are four points, and again I would refer to the statements made by the ConRail delegation. And one was that we don't discriminate. We don't go there but we don't discriminate. If we went there, we wouldn't discriminate.

I am amazed by that type of an idea that they are delivering freight cars to points in New Jersey but they are not bringing them to New York. And I think the answer to that is quite apparent in Mr. Hagen's testimony. And I will quote from it. He says: "Finally, we are willing to interchange traffic with the New York Dock Railway and BEDT on the same basis as the LI RR or with respect to traffic which we do not interchange with the Long Island on a basis that will not reduce the contribution of the traffic to ConRail."

The last words are the critical words. What we have here is we have a situation where ConRail effectively does not serve Brooklyn or Staten Island. And the answer is they don't want to serve there because they don't want to divide their rates with anyone else. In the case of Staten Island they don't want to divide with the Chessie and in the case of Brooklyn they don't want to divide with either the New York Dock Railway or the BEDT. And it is as simple as that. And they create mumbo jumbo in the tariffs to try and reinforce that point. Now, they talk about, and frankly, I thought I was reading a Kafkan novel or listening to a Kafkan novel recited when we talked about the method of shipment.

People talk as if containers are something that was brought here form the moon 3 months ago. Are we to say that, yes, we have a concept of freight rate parity but it only applies to wooden boxcars or it only applies to boxcars drawn by horses?

There is nothing different. The container on flatcar, the trailer on flatcar is not a different invention. You know when you think about it and look at it for a second, there is nothing really very sophisticated about that type of technology. It is not all that different from the boxcar. And yet we will hear this talk that, oh, yes, it applies to breakbulk cargo and it applies to cargo brought in boxcars but not to containers. Why?

Is there some real mysterious reason for it? I hear about facilities. You can move containers on flatcars; you can move trailers on flatcars through facilities in Brooklyn and Staten Island. There is nothing magic about North Bergen or Kearney, N.J. The fact is they don't want to move the freight here and they don't want to move the freight there because they don't want to divide the revenues and the tariffs. That is the basic simple question.

Now, I am particularly offended by this because I hear talk throughout the country and in Congress that New York City doesn't want to do things to help itself. New York City over the past 10 years has invested literally hundreds of millions of dollars in rail maintenances facilities. And now we are faced with the prospect that either you can't ship to them because ConRail doesn't want to or you can ship to them but you ship to them at a great competitive disadvantage to other places, particularly New Jersey.

It is not playing fair with us. We have a facility at Howland Hook at Staten Island that at the time we purchased it it was the largest capital purchase New York City had ever made. We spent almost $50 million. We have invested another $25 million in it. And incidentally, we have invested some $6 million in Federal moneys; and get the laugh on this, $2.5 million to improve the rail, which may be nonexistent because of ConRail's attitudes.

So it was my pleasure to be before the Senate committee on this in July when I spoke about instances of ConRail encouraging shippers to relocate from the New York side of the river to the New Jersey side. That continues.

There is an example that I can point to today. Archer Daniels is a distributor of corn sweeteners and corn sirups. They handle through the Brooklyn waterfront now on BEDT and on New York Dock Railway about 450 carloads a year. They are being relocated to a ConRail-owned facility in Perth Amboy, N.J., from which they will generate probably 1,000 trailer truckloads of traffic through Staten Island out to Brooklyn and Queens and further out to Long Island. This is exactly what they are doing, and losing hundreds of jobs in New York because of this.

My conclusion, Mr. Chairman, is that ConRail has not played fair with New York City and I don't think they have played fair with the Congress. I think I heard some poetry in motion here today which indicates to me that they have or had no intention of complying with the congressional mandates. And frankly, on the strength of that until they can offer you some better explanation of what it is they are doing, I would urge you to seriously consider withholding approval of their appropriation.

[Mr. Gavan's prepared statement follows:]

STATEMENT OF HENRY J. GAVAN, GENERAL COUNSEL, OFFICE OF ECONOMIC DEVELOPMENT, CITY OF NEW YORK

Mr. Chairman and Members of the Committee. I wish to take this opportunity to thank you for giving The City of New York this opportunity to testify concerning the important questions which are raised in these hearings with regard to ConRail's funding requirements and on H.R. 11492. As you know, the question before the Congress is an amendment to the Regional Rail Reorganization Act of 1973 to authorize additional appropriations. Mr. Edward G. Jordan, Chairman and Chief Executive Officer of the Consolidated Rail Corporation, appeared and testified before the Committee on April 12, 1978. At that time, Mr. Jordan indicated to you that his appearance before you was "to review the progress made in restoring adequate and efficient rail service to the Northeast and Midwest regions of our nation. . . ." We also would like to review the progress made in this connection, with particular reference to its effect upon the economy of The City of New York. Accompanying me today are Carmine Ragucci, President, Howland Hook Terminal Operating Company and Joseph Byrne, Vice President, Northeast Marine Terminal. Mr. Byrne and Mr. Ragucci are the operators of these two City-owned facilities which are greatly dependent upon rail service. They are available to answer any questions which any member of the Committee may wish to pose.

It was my privilege to appear before the Committee on Commerce, Science and Transportation of the United States Senate on July 29, 1977, at which time I indicated the great concern of The City of New York with reference to the lack of competition in rail service on the New York side of the Port of New York. I pointed out at that time that we were concerned not only with the concept of a ConRail monopoly, but also with the activities or nonactivities of ConRail, which we viewed to be detrimental to the interests of The City of New York. I am saddened to say that the conduct of ConRail since that time has done nothing to alleviate our fears, but in fact these fears have been heightened. The very measure which the Committee has before it today demonstrates that the activities of ConRail are in fact funded, subsidized and supported by the People of the United States, acting through the Congress. This very fact alone should create a sensitivity in ConRail to the prejudicial application of ConRail programs and policies with reference to the citizens and taxpayers of any particular jurisdiction, in this case, the people of The City of New York.

Rail freight parity has existed throughout the entire Port of New York since before the turn of the century. Such rate parity is codified in the Interstate Commerce Law and has been specifically recognized by the Congress in the final system plan which led to the creation of ConRail. The 4R Act specifically adopts this principal. In the face of this specific and well documented congressional mandate, ConRail continues to impinge upon the concept of rail freight parity throughout the Port of New York. Mr. Stuart Johnson, in his testimony later today, will point out specific examples of this conduct. Such discriminatory and prejudicial actions by ConRail contain the seeds of economic disaster for The City of New York. As you know, the economy of The City of New York has been adversely impacted by a variety of causes, some internal, some external, over the past several years. In an effort to strengthen and solidify the economic base of the City, we have invested substantial sums of money in the creation of industrial facilities which are totally dependent upon the availability of reliable rail freight service at competitive rates.

The City has invested $75 million in the acquisition and improvement of the Howland Hook Containerport in Staten Island, we have spent $7 million in the acquisition of the Staten Island Industrial Park, $25 million each in the purchase of the Brooklyn Navy Yard, Northeast Marine Terminal in Brooklyn, $10 million in the Flatlands Industrial Park in Brooklyn, $7 million in Bush Terminal in Brooklyn, and $117 million in the Hunts Point Food Distribution Center in the South Bronx. The successful development of each of these facilities depends upon the continued availability of rail freight service at competitive rates. The actions of ConRail in a piecemeal aggregation of the policy of rate parity throughout the Port of New York seriously jeopardizes the economic viability of these facilities, together with countless thousands of facilities which are privately owned. There is no justification for such conduct, and we believe that the continued implementation of such programs and policies is an inappropriate use of tax levey funds. Therefore we believe that it is appropriate that this Committee withhold its approval of additional appropriations to the United States Railway Association until ConRail demonstrates to the satisfaction of the Congress that it has, in fact, complied with the congressional mandate concerning rail freight parity within the Port of New York.

Mr. MURPHY. Thank you, Mr. Gavan. Mr. Hennessey, hasn't the State of New York committed about $9.9 million to the construction and improvement of the rail facilities on the Brooklyn side of the port?

Mr. HENNESSEY. We have, Mr. Chairman, aid that is a recent contract that will improve the New York Dock Railway. And it is only one contract of many that we are investing State dollars for the purpose of improving that part of New York and New Jersey for the sole purpose of taking care of the rail line that we are going to bring in via Bay Ridge from Selkirk, which will reestablish rail service into the Brooklyn Port for the first time in 25 years. This is the kind of work that we are doing in New York today, trying to build back up the port.

Mr. MURPHY. That Selkirk connection involves southern New England basically aid of course that would bring service back down and into southern ports?

Mr. HENNESSEY. Exactly.

Mr. MURPHY. What would be the affect on this project if this present rail discrimination in rates exists?

Mr. HENNESSEY. I don't know. The fact is we are going ahead and doing it anyway. We have to. We can't sit by and watch it deteriorate any further. The day of reckoning is long past due. If we don't do it today, it shall never get done. And so in my mind we don't have a choice in this matter. And if there is litigation, so be it. We will litigate for our equality that we deserve at the port. But we are going ahead with our rail improvements and with our new facility at Redhook and our new containerization facilities.

Mr. MURPHY. I wish Commissioner O'Neal and his rate expert were here and Mr. Murphy was here.

In making rates, volume happens to be a vital element to move one railroad car or one trailer or one container is one thing but to move 20,000, 30,000, 50,000 over the same facility there is an economy of scale of movement. And therefore, a rate may be compensatory at one level; it can still be compensatory at even a lower level, depending on volume. And of course, some of the sophisticated rate people in the ICC are more interested in form on filing a tariff than on the substance of the tariffs, and on what I think is proper ratemaking. But I see a discrimination against BEDT. I think from 1974, because of this termmination of service, they went from 18,000 carloads down to 8,000 carloads in 1977.

And that is the type of effect that is there because we don't have movement through Cranford Junction in Philadelphia, 4,000 carloads are not serving Howland Hook, correct?

Mr. RAGUCCI. More than that; approximately 8,000, no, 7,000.

Mr. MURPHY. OK, 7,000 carloads into this facility, with the Federal Government's $2.2 million EDA money and one rail spur to make it possible. And that is because there is no competitive rail system coming in through Cranford Junction.

Mr. Goldmark, would you describe the competitive situation in the Port of New York vis-a-vis the other North Atlantic ports particularly in regard to container traffic?

Mr. GOLDMARK. Well, our estimate is that roughly three-quarter of the export-import containers that go to the Midwest, the industrial heartland, approximately three-quarters of that container traffic goes to Baltimore and the remaining one-quarter probably goes to the other North Atlantic ports.

I want to stress, Mr. Chairman, that that is a very rough estimate. There are other figures, and other figures are not very good on this. And when I am sure of a figure, I will tell you and when I am making an estimate I will tell you. That is an estimate.

And what concerns me is the prospect——

Ms. MIKULSKI. Excuse me, how many are we talking about when you say three-quarters?

Mr. GOLDMARK. You are talking about a universe—I am going to ask Cliff O'Hara for an estimate of the universe of the export-import containers. In all the North Atlantic ports maybe 120,000, 130,000 a year?

Mr. O'HARA. More than that: 150,000 a year.

Mr. GOLDMARK. 150,000 a year. And I am talking about a universe, export-import, to the Midwest. I am not talking about the overnight delivery within 50 miles of a port. The figures are very bad on this, ma'am, both within each of the ports and among the ports, and they are bad as between the rail and the truck. So as one who has recently come to study this matter, I am going to be very careful in making these estimates.

But that is roughly our sense of the situation, Mr. Chairman, and as I expressed, one of my concerns is that situation will continue to deteriorate as the gap widens.

Mr. MURPHY. Would you tell us the investment that the port authority in New York has made in its facilities within the Port of New York and the importance of rail and marine service to those facilities?

Mr. GOLDMARK. Well, the port authority's investment in all its facilities is close to $4 billion. At least $1½ billion or more of that is in marine terminals alone. As you know, there is tremendous private sector and now increasing State investment and support of rail service. And I really think of all of this as a whole. And again I will make a guess for you, Mr. Chairman, and say that total investment public and private must be well over $2 billion.

Mr. MURPHY. Would you tell us the port authority's policy toward rate parity within the port?

Mr. GOLDMARK. The port authority's policy Mr. Chairman, is very simple. The port authority was created out of a desire on the part of two States to treat the port as a whole, as one, and that is our policy to treat it as a whole wherever possible, as one. And therefore, as the Sun rises so it must set: we are for parity within the port and have taken a number of steps in recent months to try and achieve that objective.

Mr. MURPHY. And you operate marine terminals on both sides of the port?

Mr. GOLDMARK. Yes, sir. The majority of investment is on the New Jersey side. We are trying to take steps there to make sure a balance is maintained.

Mr. MURPHY. What is the port authority's policy on rail versus truck service within the port?

Mr. GOLDMARK. Within the port? I would be very frank that we think in both cases steps are going to have to be taken both by ourselves and by others to reduce the cost of both. That is why we paid such attention recently to the question of drayage within the port area. We are at a competitive disadvantage in terms of drayage rates in the Port of New York and New Jersey. That is why we are attacking the problem of demurrage and the free-time restrictions which discriminate against the Port of New York and New Jersey among other ports.

And that is why we have negotiated, for instance, with the truck conference carriers to reduce their costs. In January we succeeded in talking them into a 35-percent reduction in their terminal charges to shippers in the New York and New Jersey area.

Basically my attitude toward that is that it is going to take a great many of us working together on a great many fronts to reestablish our competitive position just to keep up with everybody else. And that includes rail and truck and rate and free time, and the cost of operations at the terminals. That includes all of them.

Mr. MURPHY. How about car float?

Mr. GOLDMARK. That includes car float. I see the key area to focus on is container traffic however. Car float has primarily been used to move box car, break-bulk back and forth. I see the key to the future competitive positions of the port as the ability to move containers around the harbor at a competitive equalized rate within the harbor.

Mr. MURPHY. Mr. Gaven, would you express yourself on the relative advantages or disadvantage to the city of rail and truck service with regard to pollution, congestion, safety, service, and so forth?

Mr. GAVAN. It is obvious Congressman, that the preferred method of transportation within the city is by rail. You minimize all the problems that you have referred to. And just to get an idea of a microcosm of this problem is this reference I made before to Archer Daniels. By this unilateral decision of ConRail we now create probably somewhere between 900 and 1,250 additional truck movements from northern New Jersey points to places within Brooklyn, Queens, Nassau and Suffolk Counties within New York. Now, admittedly 1,200 additional trailer movements may not be a substantial number but this is only one shipper. This is the continuation of a policy and an attitude that has developed.

And what they are doing is by causing traffic intended for New York City to terminate in northern New Jersey, they are creating this tremendous amount of truck congestion and traffic across New York City using the crossing at George Washington Bridge with the tunnels to get through and then causing these trucks to travel through the city to get into Brooklyn and Queens and further out to Long Island. An impossible situation under the circumstances we face today.

Mr. MURPHY. Mr. Ragucci, with Howland Hook located on the western side of the port, with direct rail connections to the rest of the country, let alone Cranford Junction's Chessie connection, what does it do to your attraction to a shipper when he has to pay a higher freight rate to get to your terminal?

Mr. RAGUCCI. He is not going to come there. He is going to go somewhere where he is going to get it cheaper.

Mr. GAVAN. And Congressman Murphy, could I point out in terms of the city's investment in Howland Hook that we only have developed about one-third of the Upland area of Howland Hook. There is a tremendous amount of expansion capability at Howland Hook. And I concur in Mr. Ragucci's remarks that our ability to further develop this asset that we have is severely limited by the inability to promise competitive rail service.

Mr. MURPHY. Gentlemen, I would think that your counsels had better be prepared for a petition before the ICC on the present situation because just what this committee's action is going to be, until we take up a trunk line bill can be, I am not sure. But I would think that in any case that petitions should go forward.

Ms. Mikulski.

Ms. MIKULSKI. Thank you, Mr. Chairman. I must say I am really impressed by this array of New York executives who through their feistyness and assertiveness are really out here fighting for the economic future and economic viability of New York. And I wish you well for New York's survival in everything but not this particular one for obvious reasons. You can count on me to help you in other things.

And, Mr. Chairman, in view of just getting this testimony, I would like to be able to submit some written questions to members of the panel, as well as ask for a few now.

Mr. MURPHY. The record will be held open.

Ms. MIKULSKI. Thank you. I have a question for Mr. Goldmark or perhaps Mr. Gavan. When we talk about numbers, how many containers roughly did the Port of New York handle in 1976, particularly those 20-foot type containers?

Mr. GAVAN. I will defer all the tough questions to Mr. Goldmark.

Mr. GOLDMARK. The total, including domestic and foreign, is about 1,700,000, that is TEU's or 20-foot equivalents.

Ms. MIKULSKI. Wel, thank you, Mr. Goldmark. Mr. Chairman, I have some statistics from the Maryland Port Authority that I think are interesting and also bear upon this because Mr. Goldmark talked about how Baltimore gets three-quarters of all this traffic going to the Midwest. And my figures say, and we might be off by 200,000, that New York in 1976 handled 1,940,000 20-foot containers. Baltimore handled 355,600 containers of the same equivalent size. So that when we talk about the market that we are developing, it is inconceivable to me why New York is interested in such a small number of containers when your volume is approaching 2 million containers and our volume is only one-third of a million.

Mr. GOLDMARK. Is that a question?

Ms. MIKULSKI. Yes; I mean, to me we are all brothers and sisters along the Northeast corridor fighting for economic survival. And I feel quite frankly you are being almost economically cannabalistic towards my city.

Mr. GOLDMARK. My opinion, with all due respect, Madame, is that in this field brotherliness and sisterliness are based on equalization and not discrimination. And that the numbers you are talking about, if you would trace them over the past 4 or 5 years, would have shown a sharp rate of increase in your traffic, and a rate of decrease on all of ours. And I also am not familiar enough with the numbers obviously from the Maryland port administration. I would ask whether those are all traffic or export-import? And if export-import, to what destination?

Ms. MIKULSKI. Well, I can furnish that to you later. But let's deal with the issue of equalization. Hasn't ConRail already equalized certain multiple container movements in the North Atlantic ports, for example, the movements of 10, 30, and 60-containers?

Mr. GOLDMARK. Yes, ma'am. Thank, God.

Ms. MIKULSKI. Isn't it true that New York has a rate-favorable cost of 60-container movements that do not apply to Baltimore; and that you have that market all wrapped up so that we don't even have access to it?

Mr .GOLDMARK. My recollection is that was an area where the rates are equalized. I am not aware of——

Ms. MIKULSKI. Well, my research into the area says that No. 1, the rates are equalized; and they are equalized on the movement of 20, 30, and 60 containers shipped at once.

No. 2, New York has a favorable cost rate particularly with the 60-container movements, which is an incredible amount of volume which you are geared up to handle, that doesn't even apply to Baltimore. So we are talking about equalization. And you do have it particularly where large numbers of containers are being shipped. Quite frankly, where we do have an edge is where it is one container, two containers or three containers; which is very small potatoes compared to New York.

Mr. GAVAN. I think the point that was being made by your researcher, and I think the figures were produced through ConRail or through a ConRail article or a ConRail statement, indicate this thought that New York is somehow more likely to handle these 60-container shipments. And I would say that while that may be true, I suspect that if we saw figures on that, we would see that the movements of that size are very, very limited.

And as Mr. Ragucci points out to me, the bulk of the shipping, particularly in the import-export, are in the smaller container volumes of one, two, three, four, and five.

Now, I will point out, and perhaps add to Mr. Goldmark's remarks, I don't think that any action of the city of New York or the State of New York or the Port Authority of New York and New Jersey is meant to be detrimental to the future progress of the Port of Baltimore or the Port of Philadelphia. I think that your comments concerning brotherliness and sisterliness are well taken. I think what we do see, and I have seen it through the economic activities of the city of Baltimore, which has been very progressive, is that you fight like hell when you think you are losing things. And I don't think we figure so much that we are losing things to Baltimore. Baltimore is not our enemy or is Philadelphia. We are losing out to the rest of the world because of a variety of reasons, one of which is what we feel to be this unfair rate situation.

That is only one facet of the very large picture.

Ms. MIKULSKI. Well, that brings up something very interesting. According to newspaper reports I understand there have been meetings convened by New York with Boston and Norfolk on this particular issue. My question to you or any members of the panel is, No. 1, have these been open or secret meetings? And No. 2, how did they comply with your State sunshine law?

Mr. GOLDMARK. I was the one who called those meetings with other ports. And they were not only open, I announced them.

Ms. MIKULSKI. Through what method, Mr. Goldmark?

Mr. GOLDMARK. I announced them publicly, in my testimony before a New York committee.

Ms. MIKULSKI. So they did comply with your sunshine law?

Mr. GOLDMARK. With the State sunshine law?

Ms. MIKULSKI. Yes.

Mr. GAVAN. Well, the public offices law I believe is the law that governs the question of announcing public meetings.

Ms. MIKULSKI. That is correct. Are you familiar with that, Mr. Goldmark?

Mr. GOLDMARK. Yes; I am. The port authority is not subject to the New York sunshine law. That is the reason you hear me hesitating. But basically we have——

Ms. MIKULSKI. You are exempt from the New York sunshine law?

Mr. GOLDMARK. Yes, because we are a bi-State agency. Therefore, it takes legislation in both States. But if the spirit of your question is did we do it in the dead of night, the answer is no.

Ms. MIKULSKI. Was Philadelphia asked to join in this consortium?

Mr. GOLDMARK. Yes.

Ms. MIKULSKI. Did they join?

Mr. GOLDMARK. They have taken no position I know of.

Ms. MIKULSKI. Do you know why they haven't?

Mr. GOLDMARK. No; I don't.

Ms. MIKULSKI. Have they conveyed that to you?

Mr. GOLDMARK. Have they conveyed——

Ms. MIKULSKI. Whether they want to join with you in this or not?

Mr. GOLDMARK. They have conveyed to me that as of now they have taken no position on the matter one way or the other.

Ms. MIKULSKI. Well, they have conveyed to me they support more of a Baltimore position and don't want to join with you.

I know that New York is really ConRail dependent. Am I right?

Mr. GAVAN. Yes, ma'am. That is absolutely true.

Ms. MIKULSKI. You are absolutely dependent on ConRail?

Mr. GAVAN. That is the big problem.

Ms. MIKULSKI. For that I am more than sympathetic. How do you feel, any one of you, about Mr. Hagen's comments that if we equalized according to the formula that has been suggested here, we go the New York equalization rate. Mr. Hagen said earlier that this would have a detrimental effect on ConRail and force people to move to other modalities such as trucks for example. What is your response to that comment?

Mr. GAVAN. Well, my response to it would be segment to several sections. As you know, we go back and the final system plan contemplated of course that we have a direct competitive service with ConRail I believe through Norfolk & Western. Unfortunately, that never developed. We have supported the concept of some competition through perhaps the amalgamated device of the Delaware & Hudson and the Chessie System coming in through Cranford Junction.

I believe if we had competition with ConRail that probably a number of the problems that we have here today would disappear because of that great old competitive situation. I believe that you can look at the figures and see that the railroads have been remarkably unsuccessful in competing with other modalities particularly the truck. I would suspect that if you looked at the division of traffic between rail and such traffic that trucks can handle, you would find out they are handling most of it now.

However, there are specific advantages to shipping by rail; one of which is cost. There will be increasing pressures I believe through the Congress because of the environmental questions raised by this tremendous proliferation of truck traffic. And I think that we have to look to the future which says that there has to be a resurgence in some form or another of rail movement and it has to be at the expense of the truck, again principally on these environmental cncerns. I regretted the statement that Mr. Hagan made, again in the spirit of brotherliness and sisterliness, and perhaps it is indicative of the reason the railroads have had such a wonderful track record—and I don't speak only of ConRail; I am talking about rail in general—is that if they force us, they say, to equalization Ms. Mikulski, what we are going to do is we are going to raise Baltimore's rates to the highest rate.

Ms. MIKULSKI. That is right.

Mr. GAVAN. Well, I am sure that I can suggest that there are four or five different solutions to that: One of which is to bring it to the lower rate, one of which is to find an average rate. And certainly it offends my spirit again of cooperation, that we have to look at this thing as if it means increased charges on shippers in the Port of Baltimore and other ports in the Northeast. And I think it is a very unimaginative approach to it.

Mr. GOLDMARK. Can I comment on your question also? I would be even blunter than Mr. Gavan. First of all, I think one of the issues that is very important in determining competition with the trucks is the quality of service. And I think that is where ConRail has some major improvements to make. And I do not regard the rate issue alone, particularly we are talking long-haul and we are not talking in the 50-mile, 60-mile, 100-mile area, and it is a service issue that really is going to determine whether people go by rail or by truck, as well as the rates.

And second of all, I noted carefully that you asked ConRail not how would they equalize if they had to equalize, but would they equalize to the New York rates. And I have to say in all fairness I regard their answer as a red-herring answer. I question seriously whether were they forced by law to equalize, whether they would equalize it to New York rates. To put it another way, if I were setting ConRail's rates, I am not sure I would do it there. I think it would probably work out best for all the ports involved and probably for ConRail's competitive position with the trucking industry and for their overall bottomline were they to equalize somewhere in between.

And I have gone very toward telling you I think if I were to guess what would be in their best interests to do if they were faced with it, that is how they would react.

Ms. MIKULSKI. Well, I think one issue we are in absolute agreement on is the level of service needs to be improved to all ports. So when I made that comment about ConRail-dependent——

Mr. GAVAN. I understood your reflection on this.

Mr. ROSSI. I would like to make one additional comment. The three agencies here are doing an intermodal study of container type traffic for the city of New York.

And I think you can imagine that the type of industry that is located in the city of New York tends to ship in a trailer lot load, in the absence of sidings to these various industries, and the type of business is very small. What we are finding in that study, and we are using the same consultant that did the national intermodal network study for FRA, is that ConRail is not participating in that business at all. They are not getting the business in New Jersey. What is happening is that if the shipper loads it on a truck, it goes by truck all the way to its destination at the other end. They will not go into the congestion of the New Jersey terminals.

So I would think an answer that ConRail could have given with some marketing initiative is that there is business there we would like to penetrate with direct service and with a lower rate that is not moving by rail at all.

So I want to just echo Peter's comment that the answer they gave was to flag the issue in front of you and not to give an honest answer or to point out all the options that were available to them.

Ms. MIKULSKI. I must say I did bring it up.

Mr. MURPHY. I might just say to my colleague the last 10 years the foreign commerce of the United States has gone from 10 to 20 percent of our total commerce. As a consequence, the statistics clearly show that the Port of New York is about 100 percent behind the overall port development in participating in this commerce. In other words, they have increased their tonnage and the number of handlings of cargo but at a 100 percent lower rate than the average. And one of the reasons was that New York was the focus of the 17 bankrupt railroads that became ConRail—no, 7.

Ms. MIKULSKI. It seemed like 17.

Mr. MURPHY. And ConRail is still, I think, trying to put together their tariffs, they are trying to put together what service is the proper service. And while they are going through, let's call it reorganization pains, the Port of New York is getting more than its fair share of problems from ConRail's development. And Baltimore because of its, let's say, location and service via competitive rail service is in a different position. But as long as the taxpayer of New York is supporting ConRail, we certainly feel that we should have what was anticipated in the 3R Act and in the 4R Act; and that is a competitive basis for our rates and an equalization both within the ports as well as to the ports.

Ms. MIKULSKI. Mr. Chairman, does New York benefit much from the import of oil into the United States? Do you get much of that cargo?

Mr. MURPHY. The basic refinery network for the East is probably more Philadelphia and Delaware oriented. We do have some substantial refinery capacity in the New Jersey side of the port. But perhaps on the east coast the Delaware Bay and the Delaware River——

Mr. HENNESSEY. It is off-pipeline.

Ms. MIKULSKI. I beg your pardon?

Mr. HENNESSEY. It is off-pipeline for the most part.

Ms. MIKULSKI. I was just wondering that that seems to be one of the biggest things coming in. I just wondered if you were benefiting from that traffic. We are not either.

Mr. MURPHY. Well, you get it the same way we get it.

Ms. MIKULSKI. Thank you, Mr. Chairman.

[The following material was received for the record:]

Ms. MIKULSKI. Pursuant to my right reserved at the hearing on H.R. 11492 on April 17, 1978, I would like to submit the following railroad container freight rate information for the record. It should be kept in mind that the Plan II½ rates were structured to compete with truck services and therefore are mileage-related. These rates are filed at the Interstate Commerce Commission in accordance with established procedures:

EXAMPLES OF PLAN II½ CONTAINER FREIGHT RATES BETWEEN NORTH ATLANTIC PORTS AND SELECTED MIDWESTERN SHIPPING POINTS[1]

[Plan II½ piggyback rates]

Between	Charges: 2 trailers — 80,000 lb per trailer	Charges: 2 trailers — Excess per 100 lb	Charges: 1 trailer — 40,000 lb per trailer	Charges: 1 trailer — Excess per 100 lb	Advantage using Baltimore: 2 trailers — Per trailer	Advantage using Baltimore: 2 trailers — Per 100 lb	Advantage using Baltimore: 1 trailer — Per trailer	Advantage using Baltimore: 1 trailer — Per 100 lb
Baltimore and Chicago, Ill	$981	$1.28	$605	$1.54				
New York and Chicago, Ill	1097	1.44	677	1.71	$116	$.16	$72	$.17
Norfolk and Chicago, Ill	1097	1.44	677	1.71	116	.16	72	.17
Philadelphia and Chicago, Ill	1011	1.33	624	1.54	30	.05	19	
Baltimore and Cleveland, Ohio	678	.86	417	1.04				
New York and Cleveland, Ohio	769	1.00	470	1.20	91	.14	53	.16
Norfolk and Cleveland, Ohio	819	1.04	503	1.28	141	.18	86	.24
Philadelphia and Cleveland, Ohio	721	.95	441	1.10	43	.09	24	.05
Baltimore and Columbus, Ohio	721	.95	441	1.10				
New York and Columbus, Ohio	804	1.02	494	1.27	83	.07	53	.17
Norfolk and Columbus, Ohio	804	1.02	494	1.27	83	.07	53	.17
Philadelphia and Columbus, Ohio	755	.99	462	1.16	34	.04	21	.06
Baltimore and Detroit, Mich	782	1.01	482	1.22				
New York and Detroit, Mich	815	1.04	500	1.27	33	.03	18	.05
Norfolk and Detroit, Mich	815	1.04	500	1.27	33	.03	18	.05
Philadelphia and Detroit, Mich	820	1.04	507	1.28	38	.03	25	.06
Baltimore and Ft. Wayne, Ind	804	1.02	494	1.27				
New York and Ft. Wayne, Ind	938	1.22	580	1.47	134	.20	86	.20
Norfolk and Ft. Wayne, Ind	938	1.22	579	1.47	134	.20	85	.20
Philadelphia and Ft. Wayne, Ind	856	1.10	526	1.35	52	.08	32	.08
Baltimore and Indianapolis, Ind	837	1.05	513	1.29				
New York and Indianapolis, Ind	1,000	1.32	618	1.56	163	.27	105	.27
Norfolk and Indianapolis, Ind	964	1.27	594	1.53	127	.22	81	.24
Philadelphia and Indianapolis, Ind	916	1.20	565	1.44	79	.15	52	.15
Baltimore and Lansing, Mich	840	1.06	518	1.29				
New York and Lansing, Mich	899	1.16	554	1.41	59	.10	36	.12
Norfolk and Lansing, Mich	899	1.16	554	1.41	59	.10	36	.12
Philadelphia and Lansing, Mich	895	1.14	552	1.41	55	.08	34	.12
Baltimore and Pittsburgh, Pa	499	.72	356	.88				
New York and Pittsburgh, Pa	618	.86	417	1.04	119	.14	61	.16
Norfolk and Pittsburgh, Pa	(2)	(2)	(2)	(2)				
Philadelphia and Pittsburgh, Pa	539	.78	377	.97	40	.06	21	.09
Baltimore and Toledo, Ohio	755	.99	462	1.16				
New York and Toledo, Ohio	856	1.10	526	1.35	101	.11	64	.19
Norfolk and Toledo, Ohio	856	1.10	526	1.35	101	.11	64	.19
Philadelphia and Toledo, Ohio	775	1.01	479	1.22	20	.02	17	.06
Baltimore and York, Pa	351	.39	212	.46	(2)	(2)	(2)	(2)
New York and York, Pa	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Norfolk and York, Pa	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Philadelphia and York, Pa	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)

[1] Plan II½ rates which are all inclusive, apply to a ramp-to-ramp service and involve the use of railroad equipment These rates also apply to steamship line containers when the railroad and the steamship line have a working agreement. In short, the trailers must qualify as railroad equipment or, in the case of a 2-trailer shipment, one trailer may be a shipper's trailer and one trailer a railroad trailer.

[2] No Plan II½ rates published.

[3] Applies via WM Ry. only.

Note: Freight charges include X-343 increase.

Mr. MURPHY. Gentlemen, thank you very much.

Our next witness is Mr. E. R. Lichty, general manager, operation planning, for the Chessie System.

STATEMENT OF E. R. LICHTY, GENERAL MANAGER, OPERATION PLANNING, CHESSIE SYSTEM, INC., ACCOMPANIED BY ROSS CONLIN, ASSISTANT VICE PRESIDENT, GOVERNMENT RELATIONS

Mr. LICHTY. Thank you, Mr. Chairman. I have with me today Mr. Ross Conlin who is our assistant vice president of Government relations. On behalf of Chessie System, I wish to express my appreciation for the opportunity to appear before this subcommittee to testify regarding service to the New York metropolitan market.

The New York metropolitan area has historically been an important market to the C. & O., B. & O., and Western Maryland Railroads, the major subsidiaries which now constitute the Chessie System. The Staten Island Rail Corp. (SIRC) is a wholly owned subsidiary of Chessie System but not directly connected to other Chessie System lines. C. & O., B. & O., and Western Maryland by interlining traffic with other rail carriers participate in routes serving the New York market area.

Until the late 1950's, the B. & O. operated passenger services from Baltimore and Philadelphia to Jersey City, N.J., to serve the New York metropolitan area. These trains were operated under special agreements with the Reading and Central of New Jersey Railroads. The existence of this passenger service and the operation on Staten Island left many people with the impression that the B. & O. had trackage rights over the Reading and Central of New Jersey between Philadelphia and New York. Such was not the case. B. & O. freight services to this market area were provided by normal interline routes. However, because of the close working relationships between the B. & O., Western Maryland, Reading, and Central of New Jersey, a variety of through services were provided, including the exchange of locomotives and cabooses.

The creation of the ConRail system on April 1, 1976, included the lines of the Reading and Central of New Jersey which had been Chessie System's friendly connections to serve the New York metropolitan area. The through freight train services continue to be operated. However, Chessie System's participation in the traffic of the New York metropolitan area has greatly declined since the formation of ConRail.

During the Northeast reorganization planning process, USRA's plans called for a major expansion of Chessie System. These plans primarily involved lines of the Erie Lackawanna, Reading, Central of New Jersey, and selected parts of Penn Central. One part of these plans included Chessie System service to the New York metropolitan area more specifically described as "chemical coast" section of New Jersey. It was intended that Chessie System would serve the chemical coast through a trackage rights arrangement, and ConRail would provide switching services for the chemical coast industries. A contract was prepared between Chessie System and ConRail for that purpose. When the Northeast reorganization plans involving Chessie System failed to materialize, these specific plans for the chemical coast likewise did not develop.

An arrangement to provide competitive service to a market area through trackage rights and contract switching services is a risky financial undertaking. Chessie System is willing to undertake the necessary studies of such an arrangement to determine if there is a practical approach as to how such a service could be implemented. Many details will have to be explored and all aspects carefully considered before any recommendation in this regard can be established.

That concludes my prepared remarks, and we would be happy to answer any questions you might have for us.

Mr. MURPHY. When we discussed the southern tier acquisition by Chessie there were several meetings held here with all of the interested parties. Chessie walked away from it I think in the long run on the basis of its not being able to have its own traditional labor contracting arrangement with the various rail unions on that southern tier; and that it would have put them into a different contract arrangement that was not compatible with their basic system. Is that the same reason that the line from Philadelphia up through Cranford Junction to Staten Island is not in operation?

Mr. LICHTY. Well, the arrangements for a Chessie System to participate in the Northeast were what we call the package deal, which was negotiated over a rather long period of time with U.S. Railway Association. And that package deal included the trackage rights between Philadelphia and the New York metropolitan area where we would have a direct connection to the SIRC.

That package was presented on an all or nothing basis. There were a few minor acquisitions which Chessie was allowed to make which were not a part of that package. When we vigorously went after the labor negotiations that were required and had, as you referred to, the many discussions here in Washington with the Secretary of Labor and the Secretary of Transportation, and after those extended negotiations were unable to reach a satisfactory agreement, then the decision was made by USRA that none of that package would be available to Chessie, which did include these trackage rights to New York.

Mr. MURPHY. Would Chessie make a recommendation to ConRail that they would like to perform a service between Philadelphia and the SIRC?

Mr. LICHTY. I think we would be interested in performing that kind of a service if it was established on a reasonable basis and one in which we could have some assurance of an economical arrangement for accessing that market. When you operate on trackage rights over another carrier, the financial terms under which you enter into that kind of an arrangement are critical and you are at the other carrier's mercy from a service standpoint because you are operating on his property under his direction.

And so we would have to have some assurance, and this would be a part of our study of the arrangements, as to what kind of an arrangement we would have economically and for an assurance of a competitive service.

Mr. MURPHY. Mr. Ragucci testified a little while ago that there 8,000 carloads of traffic at the Howland Hook, with the EDA putting $2.2 million for a spur right into the SIRC Arlington yard. I don't think that is the kind of business you just thumb away.

Mr. LICHTY. Well, it would be a matter for the specifics of each situation. Eight thousand carloads is of no benefit to us if we are losing $10 on each carload. We would have to have a level of rates that in themselves were adequate to cover our costs. And in this case our costs would include the trackage rights over ConRail to get to the Staten Island Rail Corp.

Studies we have made in the past would indicate that a trackage rights arrangement only to access the SIRC are not near enough of a traffic base to justify the train service that would be required. As I have explained, we today have no train service of our own to the New

York market. Such an arrangement through trackage rights would require us to operate a train service.

I think the nature of the container and trailer business from Staten Island would demand a daily service. And this is a rather expensive undertaking.

I know the forecasts for Staten Island are greatly increased because of the Howland Hook facilities, but I would be surprised on a reasonably short-term basis that the traffic base there alone is large enough to justify a trackage rights arrangement.

Mr. MURPHY. Have you had an discussions with ConRail in providing services to the SIRC?

Mr. LICHTY. We have had no discussions with them directly since the Northeast negotiations were concluded.

Mr. MURPHY. Which was when?

Mr. LICHTY. That would have been in early 1976. I guess the last discussions with them would have been probably in March 1976.

Mr. MURPHY. What would it take to make expanded rail service to the SIRC attractive?

Mr. LICHTY. Well, we would have to have arrangements with ConRail for the trackage rights to be attractive from an economic standpoint, Mr. Chairman, the commitments for competitive service, the priority between comparable trains and what have you would have to be established. But I think one of the more important aspects of that is that I don't think Staten Island by itself, even with the expanded Howland Hook, represents a traffic base large enough to justify Chessie to operate there itself. I think it would have to be a larger market area for us to serve, such as the old Chemical Coast district that has been described earlier or something expanded to add to the volume of the base that would come along with the Staten Island traffic.

Mr. MURPHY. The Chemical Coast traffic wouldn't be affected by the equalization problem.

Mr. LICHTY. No, I wasn't addressing myself to the rate equalization question. I was merely speaking to the traffic which would be available for Chessie.

Mr. MURPHY. This SIRC is just from Cranford Junction only. You would have the route up into the entire commercial zone.

Mr. LICHTY. Well, our service to the entire commercial zone or to the Chemical Coast district or anywhere beyond Philadelphia is a service today the same as it was prior to the creation of ConRail and that is normal interline routes between the case of Park Junction, the B. & O., and ConRail to those destinations, or from the western Maryland by way of Lurgan, Pa. to ConRail. And those services would remain. And that is our basis today for competing in the Chemical Coast market.

What I am saying is that the required train service from Philadelphia to Staten Island, I don't think would be economically justified. That is too expensive a service to provide if all we are going to haul with the train is the Staten Island traffic.

Mr. MURPHY. Well obviously I have tried to make the case that you are hauling to Cranford Junction and the Staten Island traffic is from Cranford Junction only; but whatever other traffic going to the commercial zone would go to Cranford Junction. And you would have that as part of the overall traffic.

Mr. LICHTY. Well, that is a proposal or that is something to consider but there is no provision for that to date. That traffic has to go through Philadelphia. And we would turn it over to ConRail at Philadelphia. If they granted us trackage rights to Cranford Junction, there would have to be a stipulation in the grant of traffic rights as to the purpose that those would serve. And as you described it, service to Staten Island; that is all they would permit us to do, is operate over the ConRail Line to Cranford Junction to make a direct connection to Staten Island.

The B. & O. has never had rates of its own to Cranford Junction or to Boundbrook, Mr. Chairman, in conjunction with the old Central of New Jersey. This was always with the Reading intervening between the B. & O. and the Central of New Jersey. So if we were to provide a service, as you described, between Park Junction and Cranford Junction, all it would carry would be Staten Island traffic.

Mr. MURPHY. Your responses are almost like the ones we had when we were doing the southern tier question.

Mr. LICHTY. I am not sure what you are referring to.

Mr. MURPHY. You are just not interested in providing the service.

Mr. LICHTY. No, I would like to say that that was not the case during the southern tier negotiations: that we vigorously pursued the question of servicing the Chemical Coast District, Staten Island Direct, and the TOFC/COFC market in the New York area. That was a key part of our package for the acquisition of the Erie Lackawanna, Reading, CNJ lines. My position today is only to say that if we were to engage in such a service today, we would have to undertake a study as to what the market would be for us, what the arrangement would be to provide the service, and what the economic outlook would be for us to provide such a service.

We have seen a lot of changes in the New York market since the creation of ConRail. And we would have to assess from a marketing standpoint our ability to effectively compete in that market if the service was provided.

Mr. MURPHY. Ms. Mikulski.

Ms. MIKULSKI. Mr. Lichty, what if the equalization rates that we are discussing were passed or established, what do you think the impact would be, No. 1, on the Baltimore Port; and No. 2, on the Chessie Railroad system serving Baltimore?

Mr. LICHTY. Well, Chessie finds the TOFC/COFC market a very difficult one to compete in because we believe the rates are relatively low and the cost of providing that service are quite high, and the competition from the subsidized motor carrier is quite severe.

So I would only see in that if there was to be an equalization, it would be, I am quite sure, a matter of all of the rates going to the New York level rather than any of the rates coming down. I would be very surprised if any of the rail carriers would be inclined to see a rate reduction. And so the equalization would no doubt come about by an increase to the New York level.

Ms. MIKULSKI. I see. I have no further questions.

Mr. MURPHY. Thank you, Mr. Lichty, Mr. Conlin.

Ms. MIKULSKI. Mr. Chairman, I am going to have to leave. I have OMB in my office about my energy amendment, which would also help New York as well as Baltimore. I would like to ask you, if I may, your intention in relation to this matter. Are you preparing any legislation to introduce tomorrow pertaining to the ConRail authorization and pertaining to this equalization?

Mr. MURPHY. We won't cross that bridge until we have heard all of the witnesses and had their recommendations. But if you are not here, I will be happy to watch out for the interests of the Port of Baltimore.

Ms. MIKULSKI. Mr. Chairman, I am familiar with your gallantry. It is more than appreciated. My mother always told me to stay away from New Yorkers.

Perhaps we can discuss later on this afternoon what your intentions are. Thank you very much.

Mr. MURPHY. I am going to ask the next witnesses to come on as a panel: Mr. David Flint, staff assistant to the executive vice president, United States Lines; Mr. Stuart Johnson, counsel for New York Dock and Brooklyn Eastern District Terminal.

Mr. Flint, if you would sit to the left and let the Brooklyn delegation sit to the right. Mr. Johnson is accompanied by Mr. Ray Janer, Jr., and Mr. Frank F. Dayton.

Mr. Flint, if you would proceed.

STATEMENTS OF DAVID FLINT, STAFF ASSISTANT TO THE EXECUTIVE VICE PRESIDENT, UNITED STATES LINES, INC., ACCOMPANIED BY WILLIAM GESTAL, MANAGER, NORTH EUROPEAN SERVICES, FARRELL LINES; AND STUART H. JOHNSON, JR., ON BEHALF OF THE NEW YORK DOCK RAILWAY AND BROOKLYN EASTERN DISTRICT TERMINAL, ACCOMPANIED BY FRANK F. DAYTON, PRESIDENT AND GENERAL MANAGER, BROOKLYN EASTERN DISTRICT TERMINAL AND RAPHAEL J. JANER, JR., COUNSEL

Mr. FLINT. Mr. Chairman, the gentleman on my right is William Gestal who works for the Farrell Line in the capacity of manager of the North European Services.

I am here to describe the urgent need for ConRail's cooperation to establish an effective railroad connection to and from Howland Hook Terminal, competitive with New Jersey Marine Terminals, all located in the same port of New York Harbor.

In 1973, U.S. Lines opted to enter into a 30-year lease with the City of New York, because as a successful and growing company, we needed larger and more modern facilities. Many facilities were available to us, and the reasons for our selection of Howland Hook in Staten Island are germane to this hearing. Germane, because we had been assured by both the City and State of New York, that Howland Hook would be a complete and viable marine terminal, competitive with the New Jersey marine terminals located in the same port. They met their commitments in terms of money (about $75 million) as did the Federal Government with their EDA public work grant of just under $6.5 million. About $2 million of this Federal grant was for the construction of the Howland Hook terminal railroad system and its connection to the

Staten Island Railroad Corporation. The remaining Federal grant was for the construction of refrigerated and hazardous storage facilities and necessary rail spur to those facilities. Thus the money is spent, the rail system is completed, and we are without a ConRail tariff. A tariff providing rates and service on container traffic equal to and from that provided at New Jersey terminals.

In order for the Howland Hook Terminal rail system to bring about the desired results, it must have a viable service at equal rates with the New Jersy terminals from the two major railroads servicing the port area, that is, Chessie and ConRail. In light of existing legislation and practices, little difficulty was expected in making the necessary arrangements to bring this to fruition.

However, ConRail's attitudes and policies have created major stumbling blocks to this effort. The major problem stems from the physical plant of the Chessie system and ConRail. Although ConRail can connect directly with SIRC at Cranford, N.J. junction from most all points in their system, Chessie cannot. Chessie is the parent company of SIRC and yet has no direct connection with their subsidiary. This is due to ConRail's control of about 60 miles of track from the Chessie/ConRail connection at Park Junction to Cranford, where the SIRC connects with ConRail. Therefore, with ConRail holding Chessie's missing link, they can control the destiny of their only potential competitor. A market dominance is thereby created because of the absence of effective competition.

The problems created by ConRail on providing competitive container rates and service to and from Howland Hook are twofold. In the first instance, ConRail refuses to enter into joint rate arrangements with SIRC equal to those applicable at terminals in New Jersey served direct by ConRail. They have taken the position that any joint rates with SIRC must give them their existing rates to New Jersey terminals as their division of revenue. The division of revenue required by SIRC for service between ConRail at Cranford Junction, and Howland Hook would be an add-on to the New Jersey rate. This unilateral position appears to defy the intent of legislation provided to treat all marine facilities equally within a port.

ConRail refuses to recognize equalization of rates and service on cargo moving to and from Howland Hook when in container. However, that same cargo moving in conventional railcars by ConRail to and from Howland Hook enjoys the same rates and charges as apply to marine terminals in New Jersey or elsewhere in the Port of New York.

Since steamship intermodal containers comprise the vehicle which accommodates about 70 percent of the cargo moving between the inland point and Howland Hook, it is difficult to understand how a simple change of vehicle from a boxcar to an intermodal container can change ConRail's responsibility to maintain rate and service parity to all facilities within a port.

ConRail, because of their control of trackage between Park junction and Cranford junction, and their arrangement with Chessie for the use of this trackage, in effect, controls Chessie's ability to provide service. This trackage is the missing link to Chessie's having a direct line to Howland Hook and the rest of the Port of New York. At present Chessie has a run-through arrangement with ConRail at an agreed charge per car. This allows Chessie to run their train with ConRail crew to Portside Terminal in Elizabeth, and to Cranford junction to connect with SIRC. Besides the present high cost per car, they are often delayed awaiting use of the track due to ConRail's control of the system. Chessie would prefer an arrangement that would give them trackage rights—for example, lease or purchase—in which case they would have equal access and control of this stretch of track.

ConRail has had serious service problems. All of their east coast ramp terminals have suffered from massive congestion since October of last year. Embargoes were put into effect at some of their New Jersey ramps and have just recently been canceled. It has been stated, that congestion was due to the longshoremen strike and the severe winter storms, but it appears to be an ongoing problem. This has caused diversion of cargo from New York to other ports and other railroads, including the Canadian gateways with resultant loss of revenues to both ConRail and the ocean carrier. We believe that this congestion would be alleviated by providing the necessary joint rates and service to Howland Hook. However, their attitudes and policy strongly suggests they are more interested in establishing a monopoly situation than providing rail service to Howland Hook.

As an ocean carrier, United States Lines cannot negotiate the division of revenue applicable to the joint rail rates and routes comprising ConRail and SIRC to and from Howland Hook. But, we can seek the establishment of rail rates the same as those applicable at railroad ramps serving other marine terminals in the Port of New York. Without this parity the resulting economic damage to us could be calamitous. We have attempted to achieve this equal opportunity to compete fairly in the international marketplace, but continue to fall short of our mark. After discussions with ConRail, their position opposes any solution that returns less revenue to them than is obtained from rates to New Jersey terminals.

Howland Hook terminal services American-flag carriers only, that is, United States Lines and Farrell Lines. United States Lines operate 36 vessels, 17 of which are containerships in a number of major world trade routes. It is ironic that two of the largest American-flag carriers are faced with prejudicial rate practices, while their foreign flag competitors enjoy preferential rates from a federally funded railroad. This rate disparity applies also to the container marine terminal in Brooklyn which services Prudential Line, another American-flag carrier.

Until such time as a competitive railway system can be established at Howland Hook, containers must continue to be drayed to and from the New Jersey rail ramps. This, of course, is contrary to the conservation of energy that could be achieved by the reduction of truck activity between the New Jersey ramps and Howland Hook. Where are the remedies? If the ICC proceedings are required to make ConRail responsive to the clear intent of Congress, ConRail's attitude will have been justified, as the timespan to obtain relief via these proceedings might well eliminate any chance for rail service to Howland Hook. Thank you.

Mr. MURPHY. Thank you, Mr. Flint. I think I would like to hear from the rest of the panel and then we will go into questions.

STATEMENT OF STUART H. JOHNSON

Mr. JOHNSON. Thank you, Mr. Chairman. We are certainly grateful for your giving us a chance to state our concerns. The Book of Common Prayer says: "Lord, hear our prayer," and that is what we are doing because ConRail won't. To my right is Mr. Frank Dayton, who is an operating man and president and general manager of Brooklyn Eastern District Terminal; and to my left is Mr. Ray Janer, who is a rate expert. As you know, I am only a wayfaring lawyer. We have attached a map to my statement which was originally prepared by the port authority [see p. 145]. And it shows basically the physical area we are talking about. And I think what is significant that has come out today is, well, hasn't come out today, is the fact that in no other port in the United States, no other city in the United States, does the carrier impose a surcharge for delivering cargo to its own terminal.

ConRail now wants a surcharge to deliver equipment between, well, cargo between its own terminal at Kearney and its terminal at Cranford Junction. You don't find that in Chicago, I bet you don't find it in Ms. Mikulski's home port of Baltimore. And I am a little troubled with ConRail's position in that regard.

Now, the preliminary systems plan took a look at the float traffic then in New York Harbor in 1973 and 1974, and you find the Penn Central floating 27,800 cars and Lehigh Valley 14,800 cars in 1973 across the Port of New York, and the Erie Lackawanna floated 18,600 cars in 1974.

The Erie float traffic alone was about equivalent to what both New York dock and BEDT were hauling those days in total.

All that traffic has vanished from the port: meaning the New York side of the port.

Now, I think some of the statements made to you by the representatives from ConRail were not entirely accurate. ConRail wanted to get out of the port. Mr. Dayton in Brooklyn Eastern District Terminal undertook to operate Conrail Greenville piers, which the final system plan designated for that purpose. And both New York dock and BEDT offered to extend their service to the entire port, filed tariffs to that effect. And the business simply disappeared.

Now, when ConRail came in on April Fool's Day 1976, or shortly before that, they announced that they were going to adopt all the existing routes, rates, and tariffs with their connections except for Long Island Railroad, New York Dock Railway, the Brooklyn Eastern District Terminal, and to make things geographically representative, the Ann Arbor Railway, which is a waterborne operation on Lake Michigan.

Mr. MURPHY. That is not exactly what they testified to today.

Mr. JOHNSON. They did not. They did withdraw those exceptions after strenuous protests in which you, Mr. Chairman, were most helpful. After that ConRail proceeded to publish certain tariffs which provide lower rates to points which it serves on the New Jersey side of the port than those on the New York side. And again there was a storm of protests and again they were ultimately withdrawn in February of 1977, 10 months after they were propounded. Meanwhile, business dried up during that period. And as you heard from Mr. Gavan in the corn sirup illustration, they are still doing it.

They keep the existing tariff on corn sirup, and Mr. Dayton and Mr. Janer can give you more chapter and verse than I can, they are still floating at the existing tariff but they have established a lower tariff—roughly equivalent to our division to take it across the harbor to Brooklyn—to their point in Perth Amboy, N.J. And the result has been the decline in traffic, which has been progressive and certainly quite serious, which is set out in my statement here.

Now, I put some tariffs on the back here at the urging of Mr. Janer. He can explain them better to you than I can: that on paper—and this is tariff exhibit B [see p. 146] which involves Canadian paper, I guess principally newsprint. This was issued February 9, 1978, effective March 20—and you look at the destinations, they are all to Harlem River and Oak Point. And if you want to deliver paper from there, you have to truck it from those points to Brooklyn. They have completely excluded both the Long Island and the Brooklyn Terminal Railways from paper traffic they have regularly handled in the past.

If you look at exhibit C [see p. 148], which is an import commodity tariff on coffee from Mexico, you will see they say it goes to Brooklyn all right, and then they set down note 13, down at the bottom of the page, and note 13 says "will only apply when for account of the LI or PC." That is the Long Island and the Penn Central. And who is left out? The Brooklyn Terminal Railways. In other words, they will deliver coffee to Long Island points but it is discriminating against the Brooklyn Terminal Railways in that regard.

There is a similar tariff I believe Mr. Janer can tell you from Baie Comeua, which I think delivers papers to the Daily News. That is exhibit D [see p. 150]. It says some other point of origin (Mont Joli) in Canada. But again, it only goes to Harlem River and Oak Point. And from there on the note says that it goes beyond destination by truck to the New York News, Inc. press receiving facilities located in Brooklyn, Manhattan, and Long Island City.

So that means it is always going to move by truck through the congested, deteriorating, polluted streets of the city of New York.

Now, exhibit E [see p. 156] is a list of tariffs Mr. Janer supplied me with, 72 of them, mostly on export items, which don't include New York points within the port. The fact that it doesn't apply to New York points appears on the explanation in the notes. Mr. Janer advises me that ConRail correctly says that they withdrew that overall tariff, but it has since provided a great many variations on the same theme, which basically exclude New York points within the port.

Finally, Mr. Chairman, since memories fade, I have added the legislative history of the Murphy amendment, and its history on the floor when the conference committee came back, which I thought might refresh some memories around here about what the Congress was intending to do or trying to do when it set up ConRail. You know, if ConRail is coming in to ask for more money, the money they are requesting is really to provide a service. They ought to be profitmaking but it ought to be profitmaking providing the service they were set up to provide, which they clearly are not doing in this case with very serious economic consequences.

I think that is the burden of our song, Mr. Chairman.

[Mr. Johnson's prepared statement and attachments follow:]

STATEMENT OF STUART H. JOHNSON, JR., ON BEHALF OF NEW YORK DOCK RAILWAY AND BROOKLYN EASTERN DISTRICT TERMINAL

Mr. Chairman and members of the subcommittee, on behalf of New York Dock Railway and Brooklyn Eastern District Terminal, the two surviving marine railways in the Port of New York, I am grateful to you and to the Subcommittee for providing this opportunity to testify regarding our concerns about ConRail's request for additional federal financing.

I am Counsel for New York Dock Railway and until 11:00 A.M. today, I was a Director of Brooklyn Eastern District Terminal. With me today are Mr. Frank F. Dayton, President and General Manager of Brooklyn Eastern District Terminal, and Mr. Raphael J. Janer, who is Vice President of Denenholz & Janer, Inc., Transportation and Distribution Consultants for both Brooklyn Terminal Railways.

In accordance with the recommendation of the USRA Final System Plan (Vol. II, pp. 10–11), with the authority of the New York State Attorney General and with the approval of the Interstate Commerce Commission, New York Dock Railway, on September 29, 1977, acquired 86 percent of the capital stock of Brooklyn Eastern District Terminal in order to coordinate the management and operations of both railroads.

The map, which is attached to this statement as Exhibit A, depicts the points we serve in the Port of New York. We now connect all New York points in the Harbor with railheads on the New Jersey shore.

We are New York's remaining rail link to the States west of the Hudson River, and our rail marine carfloat operation across New York Harbor are virtually unique.

According to the USRA Preliminary System Plan (Vol. II, p. 362): "Penn Central floated 27,800 cars and Lehigh Valley 14,800 in 1973. In 1974, the Erie Lackawanna floated 18,600 cars."

All of this traffic has disappeared from the Port despite our best efforts to keep it.

With the advent of ConRail two years ago, ConRail withdrew this service from the Port. New York Dock Railway and Brooklyn Eastern District Terminal undertook to assume this major service, formerly performed by the bankrupt line haul carriers, by filing tariffs to extend our service throughout the entire Port of New York, rather than the limited locations on the Brooklyn waterfront which we previously served.

In addition, to enable ConRail to withdraw entirely from rail marine operations in the Port, Brooklyn Eastern District Terminal undertook, by contract, to operate ConRail's Greenville Yard in New Jersey.

Mr. Chairman, it is our hope that this Committee will require ConRail to provide the continued service to the Port of New York, which the Congress expected when it approved the USRA Final System Plan.

In order to assure continued non-discriminatory service to the entire Port, Congress adopted the amendment sponsored by Congressman Murphy of New York to preserve the rail rate parity which has traditionally prevailed within the Port of New York and to require equality in rates between Ports, Section 202(f) (3) and (4) of the 4R Act. Unfortunately, our practical experience to date with Conrail has not justified the high hopes we held for continued, non-discriminatory rail service to all parts of the Port of New York which were contemplated by the Final System Plan, and by the Murphy Amendment.

Shortly after former Attorney General Nicholas Katzenbach resigned to become Under Secretary of State he was asked whether he found the State Department to be a fudge factory. "No," he replied, "it is more like a taffy-pull."

This resembles our experience with ConRail in the two years which have elapsed since the conveyance date on April Fool's Day, April 1, 1976.

Shortly before the conveyance date, Conrail announced that it would adopt all existing joint routes, rates and tariffs with its connections, with four exceptions: the Long Island Railroad, New York Dock Railway, Brooklyn Eastern District Terminal and Ann Arbor Railroad. After strenuous protests, Conrail ultimately included us in.

Conrail then proceeded to publish certain tariffs which provided lower rates to points which it serves on the New Jersey side of the Port than those prevailing at New York points in the Port. These tariffs discriminated so clearly against New York side of the Port that Conrail agreed to cancel them, again amid a storm of protest.

Nevertheless, Conrail has persisted to this day in quietly continuing and publishing tariffs which are limited to points on the New Jersey side of the Port. Conrail has also adopted tariffs on many commodities which are landed to points in New York served only by Conrail or by Conrail and the Long Island Railroad, thereby clearly excluding the New York Terminal Railways. Examples of such tariffs are attached as Exhibits B, C, and D. These are but instances of a wide range of commodity tariffs which Conrail has filed or concurred since the conveyance date. Finally, Conrail has adopted or established tariffs which would require all-Conrail routing which would bring traffic within virtual sight of the Manhattan skyline, then running it up the west bank of the Hudson River to Selkirk Yards where it crosses the Hudson and is brought back down the East bank of the Hudson—a three hundred mile frolic and detour.

Moreover, it has been our experience that Conrail has encouraged many of our customers either to relocate on the New Jersey side of the Port or to transport it by truck across the already congested, polluted and deteriorating streets of the City of New York, rather than floating it across the Hudson.

Our experience is graphically illustrated by a decline of 50 percent in the revenue cars we have handled in the years 1973 through 1977.

	NYD	BEDT	Total
Year:			
1973	11,629	17,392	29,021
1974	11,380	18,150	29,530
1975	8,377	12,526	20,903
1976	6,443	9,403	15,846
1977	6,084	8,368	14,452

Reverting to my earlier "taffy-pull," we have been unable to persuade Conrail even to discuss potential sources of new traffic into the Port. In particular, we have been unable, despite repeated attempts to engage ConRail in a discussion of service for container traffic within the Port. This includes both export, import traffic where we can provide dockside delivery and pick up and domestic container traffic within the Port.

Again, although the State of New York has already committed the 9.9 million to the initial phase of upgrading the Brooklyn waterfront with a view to ultimate reconstruction of the former Penn Central Bay Ridge Yards at 65th St., connecting with Conrail at Parkville Junction, only 3.5 miles away, Conrail has been unwilling to discuss a proposed overland route over its lines via Parkville Junction to connect the Brooklyn waterfront with points north, including New England and Canada.

Mr. Chairman, I have not begun to exhaust the litany of our problems in dealing with Conrail. If it is permitted to continue on its present course, the City and Port of New York's look will become a ghost town. From the declining traffic figures I have cited above, I think it is clear that neither we nor our customers will long survive if matters continue as they are at present.

I earnestly urge that this Committee, in considering further masses of funding for Conrail, will make it a condition that Conrail will live up to the goals first established in the 3R Act and given concrete form in the USRA Final System Plan.

We have done our utmost to cooperate in meeting those goals and to realize the promise offered by the Final System Plan which this Committee and the Congress have approved.

I hope this Committee will require Conrail to meet us at least halfway.

EXHIBIT A

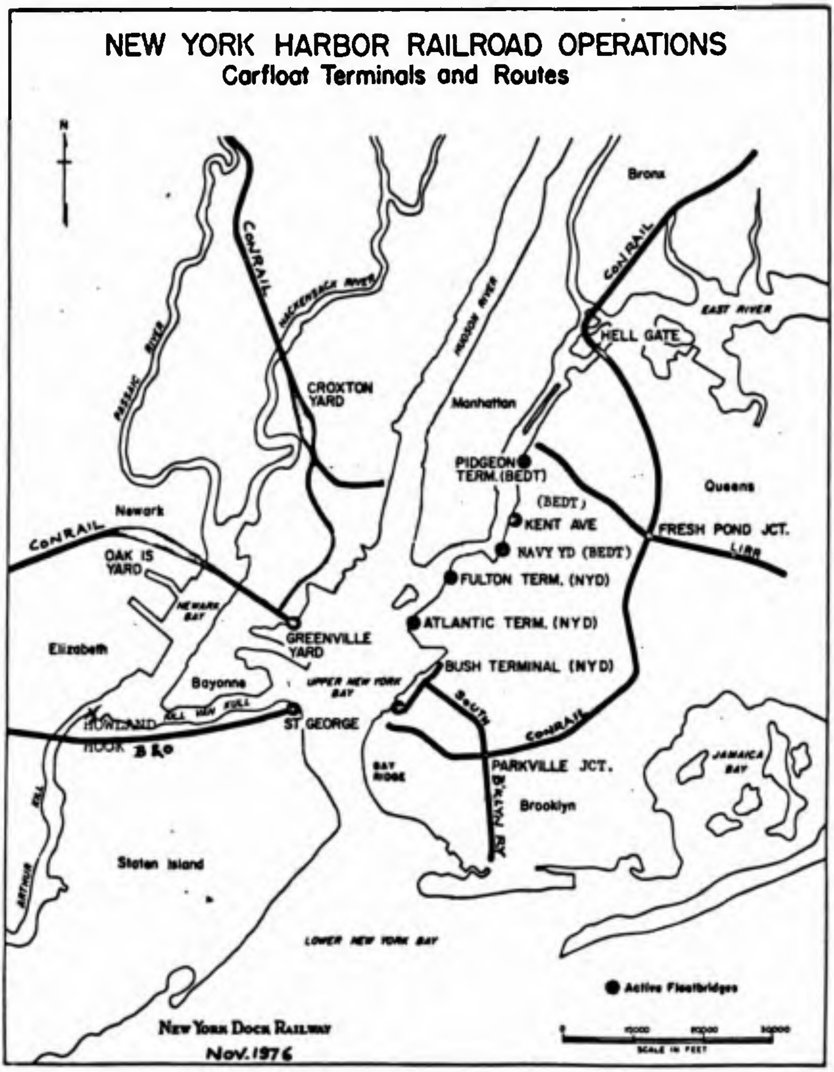

NEW YORK HARBOR RAILROAD OPERATIONS
Carfloat Terminals and Routes
N
CONRAIL
PASSAIC RIVER
HACKENSACK RIVER
HUDSON RIVER
Bronx
EAST RIVER
HELL GATE
CROXTON YARD
Manhattan
PIDGEON TERM. (BEDT)
(BEDT)
KENT AVE
NAVY YD (BEDT)
Queens
FRESH POND JCT.
LIRR
Newark
OAK IS YARD
NEWARK BAY
FULTON TERM. (NYD)
ATLANTIC TERM. (NYD)
Elizabeth
GREENVILLE YARD
BUSH TERMINAL (NYD)
Bayonne
UPPER NEW YORK BAY
KILL VAN KULL
HOWLAND HOOK
BRO
ST GEORGE
SOUTH
PARKVILLE JCT.
BAY RIDGE
B'KLYN RY
Brooklyn
JAMAICA BAY
ARTHUR KILL
Staten Island
LOWER NEW YORK BAY
Active Floatbridges
SCALE IN FEET
New York Dock Railway
Nov. 1976

EXHIBIT B

Subject, except as otherwise provided herein, to Item X-343.

INCREASE — SUPPLEMENT 10 TO — C.T.C.(F) No. 2264

I.C.C. No. 476

CANADIAN FREIGHT ASSOCIATION

(For Participating Carriers, see pages 5 to 7 of Tariff)

FREIGHT TARIFF 660-C

Supplements 1,6,8,10 and the following special supplement contains all changes.
Supplement 9 - Suspension Notice - I&S Docket 9179.

COMPETITIVE, JOINT AND PROPORTIONAL FREIGHT TARIFF

OF RATES ON

PAPER

As described in Items 500 and 505

ALSO

CORES, PAPER WINDING, Returned

As described in Item 9400

CARLOADS

FROM	TO
SHIPPING POINTS IN EASTERN CANADA	STATIONS IN THE STATES OF: CONNECTICUT, DELAWARE, ILLINOIS, INDIANA, KENTUCKY, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MISSOURI, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, OHIO, PENNSYLVANIA, RHODE ISLAND, TENNESSEE, VERMONT, VIRGINIA, WEST VIRGINIA, WISCONSIN. Also DISTRICT OF COLUMBIA

Governed, except as otherwise provided herein, by the Uniform Classification and by Exceptions thereto, as more specifically stated herein. (See Item 5).

NOTICE

This tariff contains rates that are higher for shorter than longer distances over the same route. Such departure from the terms of the amended Fourth Section of the Interstate Commerce Act is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated herein.

ISSUED FEBRUARY 9, 1978 — EFFECTIVE MARCH 20, 1978

The provisions published herein will, if effective, not result in an effect on the quality of the human environment.

Issued by P. J. LAVALLEE, Agent, Canadian Freight Association, 1162 St. Antoine Street, MONTREAL, P.Q. H3C 1B8

(Tariff 660-C)(600) — (Printed in Canada) — (BT)

SUPPLEMENT 10 TO C.F.A. TARIFF 660-C

SECTION 3

MISCELLANEOUS RATES

Rates in cents per 100 lbs.

Item	COMMODITIES AND APPLICATION				
	FROM	TO	Minimum Weight / Groups	Rates	Routes
9452A Ⓜ	PAPER, as specified in Item 9440.				
	Bromptonville............PQ	Harlem River..............NY (New York)	20,40	114	5597
		Oak Point.................NY (New York)	20,40	114	5597
	Buckingham Jct..........PQ	Harlem River..............NY (New York)	20,40	♦(11)114	5593, 5610
		Oak Point.................NY (New York)	20,40	♦(11)114	5593, 5610
	Cap de la Madeleine.....PQ	Harlem River..............NY (New York)	20,40	♦(11)114	5593, 5610
		Oak Point.................NY (New York)	20,40	♦(11)114	5593, 5610
	Donnacona...............PQ	Harlem River..............NY (New York)	20,40	114	5597
		Oak Point.................NY (New York)	20,40	114	5597
	Gatineau................PQ	Harlem River..............NY (New York)	20,40	♦(11)114	5593, 5610
		Oak Point.................NY (New York)	20,40	♦(11)114	5593, 5610
	Grand 'Mere.............PQ	Harlem River..............NY (New York)	20,40	♦(11)114	5593, 5597, 5610
		Oak Point.................NY (New York)	20,40	♦(11)114	5593, 5597, 5610
	Quebec..................PQ	Harlem River..............NY (New York)	20,40	♦(11)114	5593, 5597, 5610
		Oak Point.................NY (New York)	20,40	♦(11)114	5593, 5597, 5610
	Shawinigan..............PQ	Harlem River..............NY (New York)	20,40	♦(11)114	5593, 5597, 5610
		Oak Point.................NY (New York)	20,40	♦(11)114	5593, 5597, 5610
	Trois Rivieres..........PQ	Harlem River..............NY (New York)	20,40	♦(11)114	5593, 5610
		Oak Point.................NY (New York)	20,40	♦(11)114	5593, 5610
	Note:- Not subject to unloading or delivery allowance, nor stop-off to complete loading or to partially unload.				

EXPLANATION OF REFERENCE MARKS USED IN THIS SUPPLEMENT

Reference Mark	Explanation
♦	Increase.
Ⓜ	Issued to meet Motor Truck Competition; will not apply from intermediate points in Canada.
(11)	Provisions of Item 85 will only apply via Rouses Point, NY, DH, Schenectady, NY, CR (through Selkirk, Hudson and Tarrytown, NY). Via all other routes, the provisions of Item 85 will not apply.

-2-

(THE END)

Exhibit C

SUBJECT TO ITEM X-343 ~~ONLY TO~~ THE EXTENT INDICATED THEREIN.
THIS SUPPLEMENT CONTAINS ALL RATES AND CHARGES PROVIDED BY THIS TARIFF IN EFFECT ON THE EFFECTIVE DATE HEREOF.

SUPPLEMENT

CTC(F) 1018 TO ICC 5248

SUPPLEMENT 38

TO

SOUTHWESTERN LINES FREIGHT TARIFF 277-D

Southwestern Freight Bureau, Agent

Cancels Supplements 4 and 28

Supplements 26, 32, 34, 37, 38 and the following special supplements contain all changes.
Supplement 15 – Cancellation of routing between the LN and ICG.
Supplement 17 – Cancellation of routing via the CAGY and ICG.
Supplement 33 – Substitution of interchange point between ATSF and LA.

LOCAL, JOINT AND PROPORTIONAL IMPORT ALL-RAIL RATES

ON

COMMODITIES

ON SHIPMENTS IMPORTED FROM MEXICO

I.C.C. PUBLIC FILE COPY RECEIVED FEB 1978

FROM	TO
TEXAS RIO GRANDE CROSSINGS, Viz.: BROWNSVILLE, LAREDO, EAGLE PASS, PRESIDIO, EL PASO, RIO GRANDE CITY, HIDALGO ALSO ALPINE, TX; MARATHON, TX; ASHLEY, TX; MARFA, TX; BUNSEN, TX; PLANEPORT, TX; DEL RIO, TX; TOBIN, TX; FT BLISS, TX	ALABAMA, ARKANSAS, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, NEBRASKA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, VERMONT, VIRGINIA, WEST VIRGINIA, WISCONSIN, WYOMING CANADA, VIZ.: NOVA SCOTIA, ONTARIO AND QUEBEC

Also returned shipment of Peanuts, as described in Items 310, 315.

This Tariff does not apply on Intrastate Traffic.

MEXICO IMPORT COMMODITY TARIFF

Governed, except as otherwise provided herein, by Uniform Classification also by Exceptions thereto and Rules in SWL Freight Tariff 5 Series. (See Item 5)

NOTICES

The provisions published herein will, if effective, not result in an effect on the quality of the human environment.
Rule 9 (e) of Tariff Circular waived. ICC Permission 71-5508, amended.

ISSUED FEBRUARY 3, 1978 EFFECTIVE MARCH 20, 1978

ISSUED BY
C. M. HERZBERG, Tariff Publishing Officer
1016 LOCUST STREET
ST LOUIS, MO 63101

Made in U.S.A.

Coffee

SUPPLEMENT 38 TO TARIFF 277-D

SECTION 1

ITEM	COMMODITY	FROM STATIONS IN TEXAS	TO	Rates in Cents Per 100 Lbs CLASSES 1	2
1350-C	Coffee,green,in bags,CL. COLUMN 1 - Min wt 75,000 lbs. (Note 1) COLUMN 2 - Min wt 80,000 lbs. (Note 11)	Ashley (Note 8) Brownsville Bunsen (Note 8) Eagle Pass El Paso Ft Bliss (Note 8) Hidalgo Laredo Planeport (Note 8) Presidio Rio Grande City Toblo (Note 8)	Brooklyn (Note 6) . . . . .NY	(Note 13) 11 316 12 354	319 (Notes 9 and 10)
			Cincinnati (Note 2) . . . . .OH	261	...
			Delair (Note 11) .NJ	345	...
			Detroit (Notes 1 and 4). . . . . . .MI	261	...
			Freehold (Note 11) . . . . .NJ	337	...
			Hoboken (Note 11).NJ	...	319 (Note 9)
			Jersey City (Note 11) . . . .NJ	...	316 (Note 9)
			Newark (Note 11) .NJ	...	319 (Note 9)
			New York (Note 6).NY	(Note 13) 11 316 12 354	319 (Notes 6 and 10)
			Port Newark Elizabeth (Note 11). .NJ	...	319 (Note 9)
			Sunbury (Note 1) .OH	279	...
			Toledo (Note 1). .OH	284	...

NOTE 1 - Applies via the following routes to the Cairo,Chicago, East St Louis,Flinton,Thebes,IL and St Louis,MO,Gateways,thence via routing authorized in Item 11000:

(a) When to Sunbury and Toledo, OH,via routes in Item 1382.

(b) When to Detroit,MI,via routes in Item 1381.

NOTE 2 - Applies as follows: (Note 3)

(a) Via routes in Item 1384 to the Chicago,East St Louis, Flinton and Thebes,IL and St Louis,MO,Gateways,thence via routing authorized in Item 11000.

(b) Via routes in Item 1384 to the Memphis,TN,Vicksburg, MS and New Orleans,LA,Gateways,thence via routing authorized in SFTB Freight Tariff 985-A,ICC S-739; also via Route 4225.

NOTE 3 - When for account of LN,will apply only via routes in Item 1384 to the East St Louis,IL, Memphis,TN and New Orleans,LA,Gateways,thence via Route 5350.

NOTE 4 - Applies via routes in Item 1381 to the New Orleans,LA,Gateway,thence via routes in Item 11550 to gateways named therein,thence via routing authorized in Item 11000. (Note 5)

NOTE 5 - When for account of Southern Railway System,applies via routes in Item 1381 to the New Orleans,LA,Gateway,thence only via Route 12985 to Cincinnati,OH,Gateway,thence via routing authorized in Item 11000.

NOTE 6 - Applies as follows: (Note 12)
(a) Via routes shown in Item 1385 to Cairo,Chicago,East St Louis,Flinton Thebes IL and St Louis,MO,Gateways,thence via routing authorized in Item 11000.
(b) Via routes shown in Item 1385 to New Orleans,LA,Gateway,thence via routes in Item 11650 (Note 7) to the gateways shown therein,thence via routing authorized in Item 11000.

NOTE 7 -
(a) When in connection with the Southern Railway System,will only apply via Route 12985 to the Cincinnati,OH and Potomac Yard,VA,Gateways,thence via routing authorized in Item 11000.
(b) When in connection with the LN will only apply via Route 5350 to the Cincinnati,OH, Gateway,thence via routing authorized in Item 11000.

NOTE 8 - Applies via same routes authorized from El Paso,TX,on the SP.

NOTE 9 - Rates do not apply in connection with the LI.

NOTE 10 - Rates do not apply in connection with the PC.

NOTE 11 - Applies as follows.
(a) Via routes as shown in Item 1383 to Cairo,Chicago,East St Louis,Flinton,Thebes,IL and St Louis,MO,Gateways,thence via routing authorized in Item 11000.
(b) Via routes as shown in Item 1383 to Kansas City,MO,Gateway,thence via routes in Item 12000 to gateways named therein,thence beyond via routing authorized in Item 11000.

NOTE 12 - Applies only in connection with Column 1 rates.

NOTE 13 - Will only apply when for account of the LI or PC.

For Explanation of Reference Marks,see concluding pages of this supplement.

Exhibit D

Subject, except as otherwise provided herein, to Item X-343.

CHANGE
REDUCTION

SUPPLEMENT 2
TO

C.T.C.(F) No. 2264

I.C.C. No. 476

CANADIAN FREIGHT ASSOCIATION

(For Participating Carriers, see pages 5 to 7 of Tariff)

FREIGHT TARIFF 660-C

Supplements 1 and 2 contain all changes.

COMPETITIVE, JOINT AND PROPORTIONAL FREIGHT TARIFF

OF RATES ON

PAPER

As described in Items 500 and 505

ALSO

CORES, PAPER WINDING, Returned

As described in Item 9400

CARLOADS

I.C.C. PUBLIC FILE COPY RECEIVED NOV 12 1977 TARIFF EXAMINING BRANCH BUREAU OF TRAFFIC

FROM	TO
SHIPPING POINTS IN EASTERN CANADA	STATIONS IN THE STATES OF: CONNECTICUT, DELAWARE, ILLINOIS, INDIANA, KENTUCKY, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MISSOURI, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, OHIO, PENNSYLVANIA, RHODE ISLAND, TENNESSEE, VERMONT, VIRGINIA, WEST VIRGINIA, WISCONSIN. Also DISTRICT OF COLUMBIA

Governed, except as otherwise provided herein, by the Uniform Classification and by Exceptions thereto, as more specifically stated herein. (See Item 5).

NOTICE

This tariff contains rates that are higher for shorter than longer distances over the same route. Such departure from the terms of the amended Fourth Section of the Interstate Commerce Act is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated herein.

ISSUED NOVEMBER 10, 1977

EFFECTIVE JANUARY 1, 1978
(Except as otherwise provided herein)

The provisions published herein will, if effective, not result in an affect on the quality of the human environment.

Issued by P. J. LAVALLÉE, Agent, Canadian Freight Association, 1162 St. Antoine Street, MONTREAL, P.Q. H3C 1B5

(Tariff 660-C)(600) (Printed in Canada) (MA)

MISCELLANEOUS RATES
Rates in cents per 100 lbs., except as noted

Item	Commodity and Application
9558 ♣	Paper, Newsprint, as specified in Item 505. Carloads. (STCC 26-211-15)

Minimum weight 140,000 lbs. in cars over 42 feet in length, but not exceeding 52 feet in length, inside measurement. (see Exception)

Exception:- When cars as described in this item are loaded with large size newsprint paper rolls (width ranging from 70 inches to 98 inches) and consigned to destinations named herein for delivery to the New York News Inc. Press located in Long Island City, N.Y., actual weight will apply but not less than 115,000 lbs. per car. Such traffic shall not exceed five (5) percent of the annual volume described in Note 1 of Item 9556.

Subject to Item 9556.

Rates in cents per ton of 2,000 lbs. (EC-38913)

From	To	Rate	Route
Mont Joli.....................PQ	Harlem River (New York)......NY	(M)1800	5616
Mont Joli.....................PQ	Oak Point (New York).........NY	(M)1800	5616

Not subject to unloading or delivery allowance nor subject to stop-off to complete loading or to partially unload.

Subject to Item 420 (Intermediate Destination Rule).

Proportional rates applicable only on traffic originating at Baie Comeau, PQ for furtherance beyond destination by truck to New York News Inc. Press receiving facilities located at Brooklyn, N.Y., Manhattan, N.Y. and Long Island City, N.Y.

Return of Cores

(A) The rate provided herein will include the return of cores, paper winding, old or reused, iron or steel or compressed paper or pulp with or without metal ends bare or wound from points named in this item as destination points to stations from which rate is published.

(B) That each bill of lading and shipping order shall bear on its face a certificate in the form shown below which must be signed by the shipper or its agent.

(C) Applicable only in railroad equipment returning to point of origin via reverse route. Inbound cars must be unloaded and reloaded with cores, paper winding, old or reused, iron or steel or compressed paper or pulp with or without metal ends bare or wound from points named in this item as destination points to station from which rate is published without additional switching.

CERTIFICATE

This is to certify that the cores, paper winding, old or reused, iron or steel or compressed paper or pulp with or without metal ends, bare or wound returned in this car were received by railroad freight service with newsprint paper.

For explanation of reference marks, see concluding page of this supplement.

TCA-LA - [illegible]

LIST OF 72 COMMODITY TARIFFS WHICH DO NOT INCLUDE NEW YORK POINTS WITHIN THE PORT

Item	Commodity	Notes	Reference Mark
50650-B	Foodstuffs, Canned, Preserved or Prepared	A B	4 5
48080-D	Agriculturel Implements and Parts	*C	7
48132-C	Agricultural Implements and Parts	*C	4
50960-D	Grading end Road Making Implements	D	9
51340-A	Household Products and Related Articles	*C	4
51920-C	Crushers, Stone; Screening Machines	D	4
51980-B	Presses, Metal Drawing, Extending, Forging Piercing or Stamping, or Parts Thereof	C	4
52980-B	Cottonseed, Soybean, Lecithin Oil and Oil Foots	D	9
48770-B	Barrels, Wooden, Tight, Old, NOIBN	D	1
48825-A	Betteries, Dry Cell, Not Spent	E	1
49000-A	Boards, Building, Wall or Insulating, Fibre-Board or Pulpboard	F	8
49014	Boilers, Heeting or Power	D	1
49520-A	Cheese, Including Cheese Food	D	4
49940-A	Compounds, Buffing and Polishing, NOIBN	F G	3 4
49970-A	Compounds, Industriel Process, Weter Treeting, Liquid and/or Dry	G H	1
49980	Compound, Liquid Water-Proofing end Hardening, Consisting of Not Less Than 60% Asphalt	G	2
50040-A	Conteiners, Empty	D	2
50140-A	Crushers, Coal or Ore, and Crusher Parts, Coal or Ore	D	1
50160-A	Cylinders, Steel, for Shipping Air, Gases or Liquids Under Pressure	D	3
50200-A	Sodium Phosphate; Calcium Phosphate end Di-Calcium Phosphate	G	4
50330-A	Dressing or Blacking, Shoe or Leather, OT Belt	D	1
50540-C	Butter Greese, Butter Oil or Ghee, Butter Fat or Cream, Frozen, Butter	D	4
50660-B	Foodstuffs	B	2
51220-B	Hair, Cattle, Goat, Hog or Horse	D	4
51240-A	Hides, Pelts or Skins or Pieces Thereof, elso Splits, Cattle, Calf, Goat, Hog, Horse, Mule or Sheep, Green, Green Salted or Pickled	D	1
51241-B	Hides, Pelts or Skins	D I	1 2
51265	Hides, Pelts or Skins	D	1
51430	Iron or Steel Belt Lacing	D	1
51800	Newspaper Supplements; Magazines or Periodicals	D	3
51841-A	Air Coolers, With or Without Air Filters	D	2
51930	Machinery, Electric Hoisting end Perts	D	1
51960-B	Machinery and Machines: Paper Making or Pulp Making	D	3
52060-A	Machinery and Tools	D	3
52100-B	Metal Rolling Mill Machinery and Perts	D	3
52230-A	Machinery, Sugar Mill	D	1
52231	Machinery, Viz.: Sugar Mill Rolls, Reshelled; Sugar Mill Roll Shells	D	1
52540-A	Meats, Fresh, Cooked, Cured, Dried; Sausege Casings, Salted; Poultry and Parts, Dressed, Frozen	J	1
52730-A	Milk Food, Liquid	D	2

Item	Commodity	Notes	[illegible]
52781	Milk Solids, Powdered or Flaked; Milk, Condensed or Evaporated	D	1
53250	Explosives, Caps, Blasting or Electric Blasting, High Explosives; Powder, Black and Low Explosives	D	1
53280	Petroleum Base Detergent Intermediates	D	1
54094-A	Scrap, Iron or Steel, Not Copper Clad	K	2
54710-A	Syrup, Corn, Unmixed (glucose)	L	2
55470	Engines and Switch Boards Combined also Generators and/or Parts	D	2
55500	Zinc Concentrates in Bulk in Open Top Cars	D	1
48548	Automobile Parts	B A	2 3
49012	Boilers, Heating or Power or Parts Thereof	D	1
50060	Residues, Copper	D	1
50105	Sugar, Sorghum Grain & Sugar, Corn	D	1
50430	Elevators or Conveyors and Parts Thereof	D	3
50650	Baby Foods, Canned or Preserved	M	1
50710	Sugar, Sorghum Grain and Sugar, Corn	D	3
50880	Glass, Flat, NOIBN	A B N Q P	1 2 3 4 6
51272	Hides, Pelts or Skins	Q	1
51350	Hydrol (Corn Sugar Final Molasses), in Bulk	R	-
51404	Insecticides or Fungicides, Agricultural, NOIBN, and Weed Killing Acids	S I	1 2
51425	Insulators, Electric Wire	K	-
51620	Latex, Natural and Synthetic	T	1
51640	Latex, Synthetic	D	1
51875	Foundry Moulding Machinery	D	1
52470	Building, Paving or Roofing Materials	U	1
52850	Molasses, Beet Sugar Final	O	1
53002	Lecithin Oil Concentrate, Crude	D	2
53380	Blended Gasoline and Petroleum or Petroleum Products	D V	1 2
53680	Potassium Permanganate	W	1
53770	Pulpboard, NOIBN, Paper or Pulp	D	1
53860	Rayon Staple Fibre, Synthetic Staple Fibre, Glass Fibre Rovings or Strand	N X	4 5 6
54650	Sugar, Sorghum Grain; Sugar, Corn	Y	1
54712	Syrup, Corn, Unmixed	Z	-
54714	Syrup, Corn, Unmixed	AA	1
55110	Trailers, Farm or Freight	D	1
55540	Zinc or Zinc Alloy Plate, Sheet or Strip, NOIBN; also Zinc or Zinc Alloy Blanks or Stampings, NOIBN, Flat	D	3

EXPLANATION OF NOTES

* Postponed to November 6, 1976

A When to New York, NY for account of the PC, applies only to Port Newark-Elizabeth Port Authority Marine Terminal, NJ and to Weehawken, NJ when interchange of lading with water carriers is effected in the rail car at Weehawken, NJ.

B When for account of the CNJ to New York, NY, applies only to Port Newark-Elizabeth Port Authority Marine Terminal, NJ.

C When for account of ConRail, rate will only apply to Port Newark-Elizabeth Port Authority Marine Terminal, NJ.

D When to New York, NY, rate for account of the PC is to apply only to Port Newark-Elizabeth Port Authority Marine Terminal, NJ.

E When for account of PC will only apply to Port Newark in connection with Port Newark-Elizabeth Port Authority Marine Terminal, NJ.

F When to New York, NY, for account of PC and CNJ to apply only to Port Newark-Elizabeth Port Authority Marine Terminal, NJ.

G. Will not apply for the account of the EL.

H For the account of the B&O, PC and CNJ rates will only apply to Port Newark-Elizabeth Port Authority Marine Terminal, NJ.

I Rates apply only to Port Newark-Elizabeth Port Authority Marine Terminal, NJ and for account of EL or PC to Weehawken, NJ when interchange of lading with the water carrier is effected in the rail car at Weehawken, NJ.

J Rates apply only to Port Newark-Elizabeth Port Authority Marine Terminal, NJ and Military Ocean Terminal, Bayonne, NJ and also when for account of the PC to Weehawken, NJ when interchange of lading with the water carrier is effected in the rail car at Weehawken, NJ.

K Applies only to Port Newark-Elizabeth Port Authority Marine Terminal, NJ.

L This item does not list New York, NY as a rate base, instead it lists Elizabethport; Port Newark and Weehawken. When to Weehawken, for account of EL or PC applies only when interchange of lading with water carrier is effected in the rail car.

M When for account of EL, applies only to Port Newark-Elizabeth Port Authority Marine Terminal, NJ.

EXPLANATION OF NOTES

N Rates to New York, NY, apply only to Port Newark-Elizabeth Port Authority Marine Terminal, NJ and to Weehawken, NJ when interchange of lading with water carriers is effected in the rail car at Weehawken, NJ.

O When to New York, NY, for account of the EL or PC rates will apply only to Port Newark-Elizabeth Port Authority Marine Terminal, NJ.

P For account of the CNJ the rates apply only when transfer of lading to or from water carrier is effected in direct rail service.

Q When for account of the EL or PCR, applies only to Weehawken, NJ when interchange of lading with the water carrier is effected in the rail car.

R Rates apply only to Elizabeth; Port Newark-Elizabeth Port Authority Marine Terminal, Weehawken, and Edgewater, NJ.

S Rates will not apply for account of the CNJ and LV to New York Lighterage Points.

T Rate to New York, NY will only apply when traffic is routed through Port Newark-Elizabeth Port Authority Marine Terminal, NJ.

U Column 1 rate will not apply for account of the EL and for account of the CNJ, LV and PC, applied to Port Newark-Elizabeth Port Authority Marine Terminal, NJ.

V Rates will also apply via PCN to Weehawken, NJ when interchange of lading with the water carrier is effected in the rail car.

W The rate to New York, NY will only apply when traffic is routed through Port Newark-Elizabeth Port Authority Marine Terminal, NJ, when for account of the CNJ, EL, LV or PC.

X When to New York, NY rates for account of the EL and PC apply only to Port Newark-Elizabeth Port Authority Marine Terminal, NJ and to Weehawken, NJ when interchange of lading with water carriers is effected in the rail car at Weehawken, NJ.

When to New York, NY rates for account of CNJ will not apply to New York Lighterage Points, NY.

Y Applicable only when interchange of lading with water carriers is effected in rail car at Weehawken, NJ.

Z This item does not list New York, NY as a rate basis, instead it lists Elizabethport; Port Newark-Elizabeth; and Weehawken, NJ.

AA Will not apply for account of PC.

Exhibit E

AMENDMENT OFFERED BY MR. MURPHY OF NEW YORK

Mr. MURPHY of New York. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

"Amendment offered by Mr. Murphy of New York: At page 187, line 18, after the word 'between' insert the words 'and within'."

(Mr. MURPHY of New York asked and was given permission to revise and extend his remarks.)

Mr. MURPHY of New York. Mr. Chairman, the amendment I propose would preserve existing authority of the Interstate Commerce Commission to maintain rail freight rate parity within ports of the United States. Historically, parity has prevailed because the railroads have quoted joint rates to and from ports and they have absorbed in the joint rates terminal and switching costs in shipping rail freight from its point of origin or delivering rail freight to its particular destination within the port.

In the port of New York, the Hudson River makes rail marine service a necessity to connect the New York side of the port with the railheads of the line-haul carriers on the New Jersey shore.

As the USRA Final System Plan recognizes—volume II, page 10:

"New York Harbor is the only port on the Eastern seaboard where, because of a lack of direct rail access, car-float operations are required to serve docks and other locations."

Moreover, USRA has stated in its preliminary system plan—page 360:

"Traditionally rates to the greater New York area have been equalized. This equalization was predicted on a premise that New York City and the Eastern New Jersey shoreline were integral parts of a single economic entity."

Indeed, the USRA final system plan—volume II, page 246—acknowledges testimony that a surcharge on rail carfloat operations in New York Harbor "could ruin New York as a port city."

Mr. Speaker, I offer this amendment to protect the port of New York from such ruin by preserving the authority of the Interstate Commerce Commission to maintain rail freight parity within the port.

Mr. Speaker, I am not alone in my concern. A Joint Agency Committee, consisting of all the public agencies concerned with rail freight transportation in the port of New York, has submitted a comprehensive report on New York Harbor railroad operations. In its report the committee stated:

"* * * it is essential that surcharges not be imposed which would have the adverse effect of discriminating against the New York side of the bi-State Port. Such a system would place the City of New York in a serious position vis-a-vis competition with other Port areas, and should be avoided at all costs.

"In the Port of New York, the orderly development of commerce and industry and the protection and preservation of existing manufacturing, commercial and rail facilities require the maintenance of the rate parity system. * * *

"This equalization must be maintained. The Interstate Commerce Commission and the Courts have on numerous occasions recognized the single entity concept and in reliance thereon, the City of New York, the Port Authority and extensive private business and commercial interests have made large investments in port facilities that need to be protected and fostered."

Mr. Speaker, New York needs all the help it can get. Its commerce and industry should certainly not be subjected to a rail freight rate surcharge. To protect against any such surcharge I offer this amendment, and I earnestly hope my colleagues will support it.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. Murphy).

The amendment was agreed to.

Mr. YOUNG of Texas. Mr. Speaker, the language that was adopted by the subcommittee and by the full committee and agreed to in conference should read as follows:

"Notwithstanding any other provisions of this act the authority and responsibility of the Commission to guarantee the equalization of rates between ports and within ports where outstanding orders of the Commission have been issued shall remain intact."

Mr. STAGGERS. Mr. Speaker, I would agree with the gentleman, and I will say that we hope to attach that to the Senate resolution when it comes out.

Mr. YOUNG of Texas. Mr. Speaker, will the gentleman yield further?

Mr. STAGGERS. I yield to the gentleman from Texas (Mr. Young).

Mr. YOUNG of Texas. I thank the gentleman for yielding.

Mr. Speaker, the text of the conference report, on page 123, in the middle of the page, "Conference substitute," should read as follows:

"Conference Substitute

"The conference substitute follows the Senate bill and in addition provides that nothing in this section shall be construed to affect the existing law or the authority of the Commission with respect to rate relationships between parts or its authority and responsibility to guarantee rate equalization between ports or within the same port."

That is the corrected version.

Mr. STAGGERS. I thank the gentleman for his statement. That is what was in the bill as it came out of the committee.

Mr. MURPHY. Do you think ConRail's growing pains in assuming these seven different lines and taking their tariffs and administrations and trackage is responsible for this situation in New York, it being a question of inadvertence; or do you think it is advertence on the part of ConRail?

Mr. JOHNSON. I think when they start excluding the Brooklyn waterfront from tariffs for traffic destined for Brooklyn, clearly the intent is discriminatory. Some of it may be just the clumsiness of a pitiful, helpless giant, but not all. I quoted Mr. Katzenbach's statement in my prepared statement, talking about the State Department. Somebody asked him: "Is it really a fudge factory?" And he said, "No, it is more like a taffy-pull. You can't get anybody to talk to. And being a monopoly, ConRail can ignore what you say."

We have made repeated requests for an overland service into Brooklyn to establish tariffs and for all kinds of things. And it is like throwing a stone into a pond: There are no ripples.

Mr. MURPHY. Yes.

Mr. JOHNSON. They are very unresponsive, if not totally discriminatory.

Mr. MURPHY. What is the answer?

Mr. JOHNSON. My suggestion, Mr. Chairman, since Chairman O'Neal told you that the ICC felt no impulse to act unless somebody screamed to them, that perhaps an amendment might be engrafted onto this authorization saying it shall be unlawful to discriminate in rail rates between and within ports in a given region, at least in the Northeast region, which is already defined in the 3R Act.

Mr. MURPHY. Well, I thought we had in effect done that.

Mr. JOHNSON. Well, Chairman O'Neal was worried about the language. You remember the Murphy amendment was attached to a series of ratemaking amendments to the 4R Act. And it says that nothing in these amendments shall be construed to affect the authority or responsibility of the Commission to guarantee equalization of rates within a port. Well, the Commission isn't so sure that it ever had that responsibility, although it has exercised it in the past.

If you made it unlawful, I don't think they could forget about it quite so readily. And it would give us a clearer mandate.

Mr. MURPHY. And it would be clearly germane to the authorization bill?

Mr. JOHNSON. Sure. Because if you are going to put up some money, you are not going to put up money to subsidize discriminatory service.

I am reminded, Mr. Chairman, that Mr. Janer did protest some of these discriminatory rates. When was that?

Mr. JANER. In December 1977 on the rate from Baic Comeau to Harlem River and Oak Point. It became effective January 1st. And on behalf of Brooklyn Eastern District Terminal and New York Dock I filed a petition for suspension of those rates which was denied and the rates become effective.

Mr. JOHNSON. The Commission can suspend rates for investigation.

Mr. MURPHY. It can suspend rates for a number of reasons.

Mr. JOHNSON. It is like using a flyswatter to hit a bunch of jelly-beans.

Mr. MURPHY. What effect would that amendment have if the Chessie System had service into the city?

Mr. JOHNSON. I don't know, Mr. Chairman.

Mr. MURPHY. Wouldn't it only affect ConRail?

Mr. JOHNSON. Not if it was phrased in terms of tariffs generally. But who says ConRail can't do it? That might give Chessie an excuse to come in and give us some competition in there.

Mr. MURPHY. In furtherance of the intent of the 3R Act?

Mr. JOHNSON. Which says competition should be one of the goals and also says no pollution and no wasted energy, no congestion in the streets, and for preserving patterns of service by rail. And it would all be totally germane to the goals stated in section 206 of the 3R Act.

Mr. MURPHY. Mr. Flint, I found your testimony fascinating in that inadvertently we find the American-flag companies once again being discriminated against.

Mr. FLINT. We seem to be the bad guys. And I don't really know why.

Mr. MURPHY. We ought to take cargo preference and move shore. Maybe we would do a little better onshore than offshore.

Mr. FLINT. All I know is drayage rates over in New Jersey run about $21 a container and for us to get to the New Jersey ramps can run as high as $122 or $125. That is quite a tough way to compete.

Mr. MURPHY. Well, with the testimony of the Chessie witnesses it would seem to me that their direct rail line was right up to SIRC through Cranford Junction and, of course, right on down to Philadelphia. And the 8,000 boxes of Howland Hook, it said, wasn't a big enough base for them.

Mr. FLINT. Well, that I can't understand because Chessie is very much interested in minibridge traffic and——

Mr. MURPHY. I notice they didn't hang around to hear the questions.

Mr. FLINT [continuing]. And minibridge traffic moves in great volume. In fact, another thing that disturbs me is we sit here and we discuss port equalization, equalization within ports. And if you would observe the divisions accruing to the railroads on minibridge rates, the rail divisions of revenue are the same from all the west coast ports to Jacksonville and all the way up as far as Boston. And all railroads east of Chicago, east of the river get about 32½ percent of that. And those volume divisions are really at a depressed level. They are at a level of about $960 per container, all the way from Seattle, Portland, and Frisco and all the way into Boston. And 32½ percent of that is a lot less than the otherwise local rates out of Chicago and East St. Louis and all of these very important points.

Mr. Chairman, our ramp goes into effect, well, into effective operation hopefully this week. We are going to run a test car over the spur tomorrow; is that correct? And we've got everything ready but we just don't seem to have any railroads that want to connect with our ramp. And this is rather disturbing. Even if we were to have Chessie's agreement to come in, and I thought I had it, by the way until I sat here and listened to Mr. Lichty, we are only talking about a limited number of hinterland points, perhaps 12 or 15 where they are concerned and where the N&W is concerned as well, who are also party to this. Our main interest is getting ConRail into the picture.

They cover such a vast number of points since their consolidation which would mean it is absolutely vital that we have it.

Mr. MURPHY. I think that chart shows the gaps that you are speaking of.

They are all ConRail.

Mr. FLINT. They are. But to us it is a very, very serious situation. And as an American-flag carrier we just don't know what our next step should be. Perhaps we are going to have to petition ICC and go down that road at least and perhaps the courts later on. We tried this a little while ago in another case we had with a railroad and it took us 3 years to get an answer. We had a good case and we lost.

Perhaps that is because we are carriers subject to the Shipping Act rather than the ICC. I don't know.

Mr. MURPHY. How would ConRail get to the SIRC?

Mr. FLINT. They can connect in several places. They can connect in Cranford; these are a couple of other points that they could connect at. I think Staten Island junction is one. There is another one close to that junction as well. I can't think of it right now. They can connect and cover all of the points. The connection is no problem.

The problem with them is that they see these 8,000 containers going away from the Jersey ramps. They see that they are going to have to share that rate to New Jersey with another carrier. That is the problem.

Mr. MURPHY. Even though those ramps are obviously overcrowded?

Mr. FLINT. Even though those ramps are obviously overcrowded. And I can tell you this. There were containers, steamship containers tied up in that congestion at those ramps back in October and November that had Christmas products in them that couldn't meet the deliveries for Christmas, and even a month or so after Christmas. Many people lost their markets because of this.

Mr. MURPHY. So in effect with that type of service, that is helping chase business away from the Port of New York to boot?

Mr. FLINT. It is helping to encourage a great movement of cargo over to Canadian ports, which is a major problem for all of us in the Port of New York and in Baltimore as well.

Mr. MURPHY. Our committee is looking at that. Mr. Johnson do you have enough car float equipment to go back to an 18,000 car level?

Mr. JOHNSON. We did before, Mr. Chairman, and I am sure we could again. Mr. Dayton is an operating man.

Mr. DAYTON. We have more than adequate equipment to handle double the 18,000 carload.

Mr. MURPHY. I got the sense of your testimony that ConRail purposely diverted cargo from the Greenville car float operation and from BEDT and New York Dock Railway.

Mr. DAYTON. From us.

Mr. JOHNSON. Mr. Dayton, I might add, Mr. Chairman, tells me that it is very simple to convert a car float down to container traffic as well. And of course we don't get any of that. And we can give dockside delivery and pickup with car floats, just slightly modified, for a great deal of container traffic. I think you can take 32 at a slip, can't you Frank?

Mr. DAYTON. Yes; you can double that. You can roll them on and roll them off. There are many ways to go.

Mr. JOHNSON. You see, with the improvements which the State of New York is putting into the Brooklyn waterfront, we will have the cranes and equipment.

Mr. MURPHY. Anything else?

Mr. FLINT. Yes; I have one thing. I would like to make a correction in something ConRail said earlier. I believe you asked if they had joint rates into Staten Island and they said they did. They are wrong. They are an intermediate carrier in connection with joint rates with Chessie. And it is that little bridge service from Park Junction near Philadelphia to Cranford and that is all they are participating. It is Chessie's power and it is ConRail's crew. Now, what we are looking for when we say joint rates with ConRail, we are looking for rates to and from all the points ConRail serves. Those are the joint rates we are talking about and not this other. As they explained it, it is nothing but a fiction. That is all I have to say.

Thank you, Mr. Chairman, very much.

Mr. MURPHY. That concludes the hearings. The committee stands adjourned.

[Whereupon, the subcommittee adjourned at 5 p.m.]

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